

Plaintiff's Exhibit (PX) 3

Expert Report – Stacie Bosley, Ph.D.
For the United States Federal Trade Commission
Regarding Success By Health (SBH), a division of
Success By Media Holdings Inc.

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I. Case Overview and Expert Qualifications

1. This report was written at the request of the Federal Trade Commission (FTC) and addresses the Success By Health (SBH) business opportunity.
2. My name is Dr. Stacie A. Bosley. I have a doctoral degree in Applied Economics from the University of Minnesota. In my capacity as an associate professor of economics at Hamline University, I research multi-level marketing, direct selling and pyramid schemes. I published a 2015 paper in the *Journal of Public Policy and Marketing*¹ that addresses the intersection of multi-level marketing and pyramid scheme activity through a case study of Fortune Hi Tech Marketing, which was subject to an FTC enforcement action. I also published a 2018 paper in the *Journal of Financial Crime* that analyzes county-level risk factors associated with pyramid scheme victimization.² Most recently, I published a 2019 article in the *Journal of Behavioral and Experimental Economics* that explores pyramid scheme vulnerability using an economic experiment³ and another article that explores information disclosure and consumer earnings expectations in multi-level marketing, forthcoming in *Economic Inquiry*.⁴ I have also presented research on these topics at numerous economics conferences around the country, including the 2019 Midwest Federal Trade Commission Common Ground Conference and the 2018 Federal Trade Commission Consumer Protection Economics Symposium.
3. Beyond formal academic research, I was invited to create a TED-Ed lesson on pyramid scheme fraud⁵ and often respond to media questions related to pyramid schemes, multi-level marketing and broader issues in consumer financial fraud.
4. I have served as an expert witness for the Federal Trade Commission in pyramid scheme litigation. In *FTC v. Vemma Nutrition Company*, Case 2:15-cv-01578-JJT, I submitted multiple written declarations and testified in a 2016 preliminary injunction hearing in the United States District Court for the District of Arizona. Other than in *Vemma*, I have not testified as an expert witness in the last four years.. With respect to specific federal legislation and regulatory rule changes, I have submitted formal comments and published a 2017 opinion piece.⁶

¹ Bosley, S. & McKeage, K. (2015). Multilevel Marketing Diffusion and the Risk of Pyramid Scheme Activity: The Case of Fortune Hi-Tech Marketing in Montana. *Journal of Public Policy & Marketing*, 34(1), 84-102.

² Bosley, S. & Knorr, M. (2018). Pyramids, Ponzi's, and fraud prevention: Lessons from a case study. *Journal of Financial Crime*, 25(1), 81-94.

³ Bosley, S., Bellemare M., Umwali, L. & York J. (2019). Decision-Making and Vulnerability in Pyramid Scheme Fraud, *Journal of Behavioral & Experimental Economics*, 80, 1-13.

⁴ Bosley, S., Greenman, S., & Snyder, S. (2019). Voluntary Disclosure and Earnings Expectations in Multi-level Marketing, *Economic Inquiry*, published online as Early View (<https://doi.org/10.1111/ecin.12840>).

⁵ See ed.ted.com/lessons/how-to-spot-a-pyramid-scheme-stacie-bosley.

⁶ See Bosley, S. (September 29, 2017). Flawed Anti-Pyramid Act Reflects Confusion Over Past and Present. *Morning Consult*. available at morningconsult.com/opinions/flawed-anti-pyramid-act-reflects-confusion-past-present/ and Bosley, S. (2013). Comments Regarding the Federal Trade

5. My university teaching focuses on microeconomics, quantitative analysis, managerial economics and behavioral economics. Each of these areas is relevant to the analysis presented in this report. Microeconomics is the study of individual decision-making and responses to incentives. Behavioral economics examines decision-making with a special focus on cognitive biases and errors in judgment. Quantitative analysis provides a background in analytical approaches to understanding data and patterns. Lastly, managerial economics studies decision-making inside businesses and organizations. An understanding of the actions of the firm (e.g., in setting compensation policies and procedures) and the actions of the individual (e.g., in joining and participating in a business opportunity) are highly relevant to the analysis that follows. A true and correct copy of my curriculum vitae, which includes a list of all publications that I have authored in the last ten years, is attached as Appendix A.

6. I am being compensated by the FTC at the rate of \$200 per hour. My compensation in no way depends on the outcome of the case.

II. Purpose and Materials

7. The purpose of this report is to analyze the SBH marketing program to determine whether SBH is operating as a pyramid scheme and whether the company and its representatives are making misleading representations to consumers. The Sections that follow set forth my analysis and include: a statement of the conceptual framework I apply, including legal assumptions provided to me by Federal Trade Commission staff; an overview of the SBH marketing program and summary of report findings; a review of the company's incentive structure; a discussion of Affiliate training; a review of income and lifestyle representations; an analysis of "safeguards" to protect consumers; a discussion of available operational data; and overall conclusions.

8. As this report represents an assessment of available materials, the opinions herein are based upon materials made available by FTC staff as well as materials available to the public (e.g., YouTube videos and the company's website content). A complete listing of reviewed materials is provided in Appendix B. These materials include documents and audio-visual files available to SBH Affiliates, including the firm's *Commission Plan*, as well as training and marketing materials. I have also reviewed consumer and Affiliate transaction data, provided by FTC staff.

III. Conceptual Framework

9. For purposes of my analysis of the SBH marketing program, I will apply two related descriptions of a pyramid scheme: one being a general economic characterization and, the

Commission's Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations, Project Number P087109.

other, a definition borne of relevant court findings related to multilevel marketing programs known as the *Koscot* test.⁷

10. From an economic perspective, a pyramid scheme exists when a compensation structure is designed to create a perpetual recruitment chain that dooms the vast majority of participants to financial loss. It requires ongoing recruitment as new entrants must recruit others in order to cover their own personal investment. When a new participant recruits others, all individuals who join become part of her “downline,” while those above her are considered her “upline.” Downline activity (recruitment and associated payments/purchases) is needed in order to cover participation costs and potentially achieve advertised earnings. While the Compensation Plan details may vary, the essence of the system is that earnings are dependent on the ongoing ability to recruit others into the same system. By design, this creates a system where the vast majority of participants cannot recoup their personal investment. As long as recruitment continues, membership grows at an exponential rate. At any moment in time, the most recent entrants make up the vast majority of membership. This majority is the very group that is in a position of financial loss, as they have not acquired the downline recruits necessary to offset personal investments. By nature of the structure itself, a pyramid scheme is a money-transfer scheme that siphons money from later entrants to compensate earlier entrants, delivering easily foreseen losses (from a structural perspective) to the vast majority of participants.

11. It should be noted that the outcomes of exponential growth and widespread losses, articulated above, are expected at any point in time and do not require that the firm has reached market saturation. As demonstrated in Appendix C and below, in the context of SBH’s *Compensation Plan* analysis, the percentage of participants in the lowest levels of the organization will constitute the majority of participants at any moment the scheme is analyzed. The analysis will show that loss rates are not accidental and can be anticipated given the recruitment incentives inherent in the *Compensation Plan*. As the promised rewards are realized only if successful recruitment continues indefinitely, positive earnings suggestions are inherently deceptive and cannot be fulfilled for the overwhelming majority of participants. The absolute number of people who will ultimately be harmed (left with loss positions) grows exponentially as the organization expands. Many participants will exit when recruitment becomes more difficult. New recruits then take the place of the recent dropouts, creating a churning base. Most in the churning base will lose money while a few advance to higher levels of the organization. The vast majority of overall participants are not expected to earn enough to cover their personal investment.

12. While pyramid schemes can take a relatively simple form (e.g., gifting scheme or chain email/letter solicitation), they can also be embedded within a business opportunity that offers a product or service for sale. My understanding is that courts use the *Koscot* test (1975) to address this type of business structure. The *Koscot* analysis assumes a direct

⁷ The definitions used in this report are adapted from the definitions in a peer-reviewed article written by William Keep and Peter Vander Nat (Keep, W. & Vander Nat, P. 2014. Multilevel marketing and pyramid schemes in the United States. *Journal of Historical Research in Marketing*, 6(2), 188-210). The *Koscot* test arises from *In re Koscot Interplanetary, Inc.*, 86 F.T.C. 1106 (1975).

selling context where participants make payments that entitle them to earn based on subsequent sales and recruitment, either direct (sales or recruitment by the participant him/herself) or indirect (sales or recruitment by those in his/her downline). Such structures are commonly known as network marketing or multilevel marketing (MLM) programs. The *Koscot* analysis applies the general economic characterization of a pyramid scheme to a specific context - that of multilevel marketing - and is used by the courts to distinguish between legal multilevel marketing programs and pyramid schemes. The *Koscot* test states that a pyramid scheme, organized and promoted as an MLM, is characterized by the payment by participants of money to the company in return for which they receive (1) the right to sell a product and (2) the right to receive in return for recruiting other participants into the program rewards which are unrelated to sale of the product to ultimate users.

13. My understanding is that the *Koscot* test, which was adopted by the FTC in 1975, has been affirmed in multiple Federal court opinions including *Omnitrition* (1998), *Gold* (1999) and *BurnLounge* (2014). I am not an attorney and this report does not purport to contain a detailed discussion of the legal issues surrounding pyramid schemes. To the extent that this report depends upon legal analysis, I rely upon the determination of the applicable law provided to me by FTC staff. In addition to the *Koscot* test, I have been asked to apply two principles from the 9th Circuit's decision in *BurnLounge* that are relevant to the second prong of the *Koscot* test. The first principle is that program participants may only be considered "ultimate users" of the program's products if the participants purchase the products for personal consumption based on consumer demand, not primarily for the purpose of participating fully in the rewards under the Compensation Plan for the business opportunity. The second principle is that, in order for the second prong of the *Koscot* test to be satisfied, it is not necessary for compensation to be completely unrelated to sales to ultimate users. Stated another way, the existence of some sales to ultimate users for purposes of consumption does not prevent a plan from being an illegal pyramid structure.

14. I have also been asked to consider the additional limits on a marketing scheme operated by Mr. Noland as set out in a prior Order against him (2002-07-02 FTC Final Judgment and Order for PI as to JD Noland). In relevant part, the Order prohibits Mr. Noland from "making or assisting in the making of" false or misleading income claims, discussed further in Section VII. The Order further bars Mr. Noland from engaging in an MLM that pays "rewards which are unrelated to the sale of products and services to ultimate users" where rewards are "unrelated" to the sale of products and services to ultimate users if rewards are not based primarily on revenue from retail sales." Furthermore, the Order states that retail sales "does not include sales made by participants in a multi-level program to other participants or recruits or to such a participant's own account" and that ultimate users are "purchasers of retail sales."

IV. Marketing Program Overview and Summary of Findings

IV.1 Overview of the SBH Marketing Program

15. SBH offers coffee, tea and supplements through a multi-level marketing⁸ distribution structure. Figure 1 shows the array of products offered by SBH.⁹ Individuals can participate in SBH as a customer or as an Affiliate (i.e., as a product distributor). Customers can purchase product in one of three ways: buy directly from an Affiliate; purchase through the Affiliates' SBH-provided website; or purchase through the company's own website. If a customer purchases product directly from an SBH Affiliate, the Affiliate sets the price and personally provides the product from their own inventory. If a customer purchases from the Affiliate's website or the main SBH website, SBH ships the product directly to the customer. When buying online, the customer purchases the products at the same price as an Affiliate (i.e., "wholesale price") but the customer is not eligible to earn commissions, bonuses or other rewards (e.g., trips). To have access to such rewards, an individual can sign up as an Affiliate and earn said rewards as prescribed by the SBH *Commission Plan*.

16. The SBH website states that the SBH Affiliate will earn money by referring consumers to SBH products (<https://successbyhealth.com/?u=successbyhealth>):

“Make Money Referring Our Products & Services”

Through our powerful affiliate program, we allow everyone the opportunity to profit from our company's products and success. The Success By Health (SBH) Affiliate Program is simple to join and requires no monthly product purchases to earn commissions. Simply refer our products and services to others and earn!"

⁸ Though SBH Founder and CEO Jay Noland sometimes rejects the "MLM" term and prefers to refer to the SBH commission system as "affiliate marketing" (2017-10-31 Lets Talk Coffee w Jay Noland (Private Video Released)), the structure matches a conventional multi-level marketing (MLM) structure with the potential for rewards from personal purchases, personal sales, and the sales and purchases of downline recruits.

⁹ A recent video (SBH Power2 and VOZ Travel Training) suggests that SBH is also adding travel services to its line of offerings. Travel products will not be addressed in this report as they are not yet fully integrated into the SBH *Commission Plan* and the video content mirrors the incentive structure and training discussed in this report.

Figure 1. SBH Product Line (2018-05-05 SBH Business Overview B-2)



17. The company's flagship product is a proprietary brand of coffee. The SBH Business Overview connects the ubiquitous demand for coffee around the world with the financial rewards available to SBH Affiliates (Business Overview | Success By Health). As shown in Figures 2 and 3, SBH claims to be positioned to capture market share by "transferring" demand from substitute products to SBH, creating a "base of consumers for life." Marketing materials suggest that one percent of the global coffee market would generate a projected \$24 billion in revenue. As stated in Figure 3: "With Success By Health doing \$24 billion in annual sales, that means up to \$12 Billion is being paid in commissions to our affiliates...per year!"¹⁰ Mr. Noland argues that "if we mess it up" and only get one-half, one-quarter, or one-eighth of one percent, SBH would still be a multibillion-dollar company, paying out billions of dollars in commissions to its Affiliates (2017-10-31 Lets Talk Coffee w Jay Noland (Private Video Released)). As shown in Figure 4 and discussed in company videos (e.g., 2019-02-08 SBH Common Sense Business), SBH argues it has "four key points" of differentiation: taste, health, price, and financial rewards.

¹⁰ These calculations – moving from seven billion people, to four billion coffee drinkers, to one percent of the market and a projected \$24 billion and \$12 billion in revenue and commissions, respectively – are a common element of the SBH promotion materials. Similar arguments can be found in numerous sources, including the following: 2017-10-31 Lets Talk Coffee w Jay Noland (Private Video Released), 2018-06-04 SBH Money Talk – Financial Freedom with SBH, 2019-02-08 SBH Common Sense Business, and 2019-01-28 6a_SBHProspectingSystemCoffee. Of note, SBH states in a written document that the coffee market is a "\$100+ BILLION a year industry." 2019-08-04 SBH Business Overview. One percent of that would be \$1 billion.

Figure 2. Connection between Coffee and Financial Health (Image from Business Overview | Success By Health)



Figure 3. Capturing “1%” (Image from Business Overview | Success By Health)

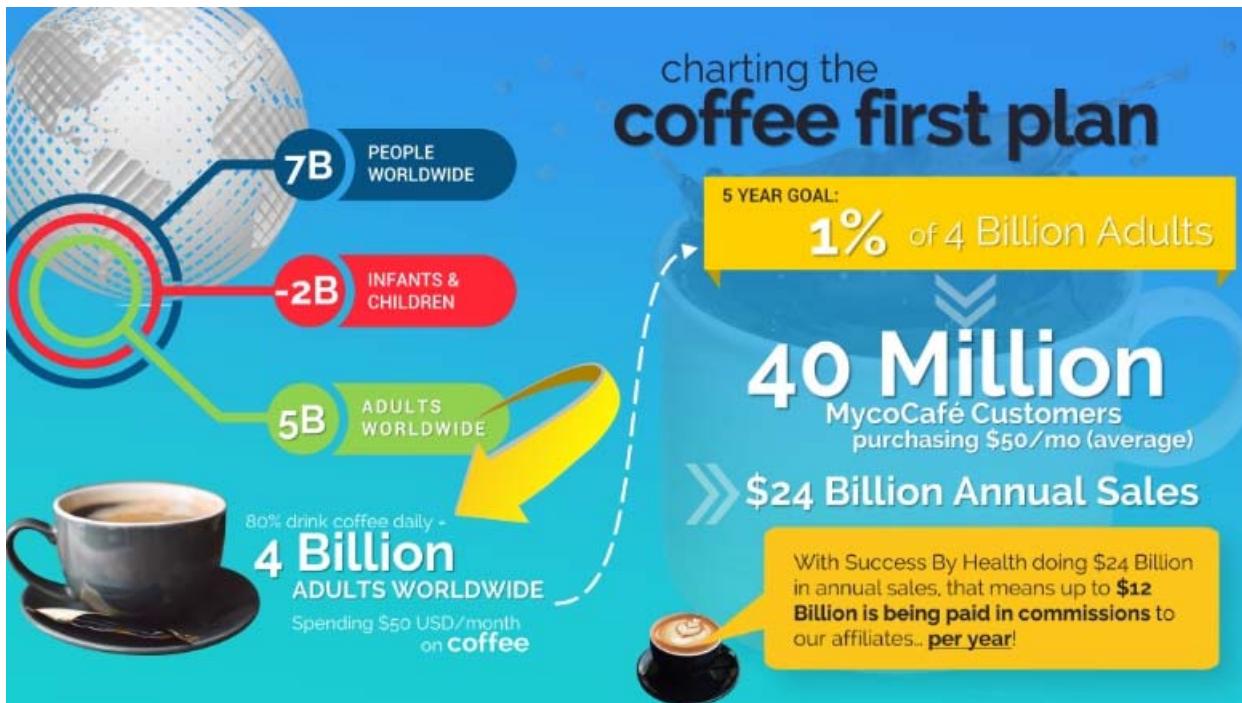


Figure 4. "Four Key Points" (Image from Business Overview | Success By Health)



18. SBH is promoted as a pathway to entrepreneurial revenue and as an answer to the challenges of the modern economy. In a promotional video (2017-10-30 SBH Plan B), the narrator steps through the risks of the labor market, traditional investments, and small business ventures arguing that SBH is the best "Plan B" option available. Quotes (below) and images (in Figures 5 and 6) summarize the argument.

"Unemployment is a constant threat. Companies are downsizing. The stock market is unstable. Experts say it is going to get a lot worse before it gets better."

"Most families only have resources to cover one month's worth of expenses if you only rely on one source of income, say your job."

"You could suffer. Your family could suffer. Your kids could suffer. Your job is not a guarantee. If you work for someone else, you have no control. How secure could you possibly be? So then, what are your options?"

The narrator continues: you could pick up a second job, "but you probably won't make enough money to pay taxes, additional childcare, extra gas in your car, and who really wants two bosses?" You could invest in a 401K plan, but "remember that money is in the stock market, need I say more?" You could start your own business, but you would "need piles of upfront money" and "85% of new businesses fail within one year." While a franchise "has a proven system," "who has an extra million dollars laying around to buy one?"

19. In contrast to these traditional approaches to income and wealth generation, SBH is described as a "home-based business with a proven system and a low start-up cost." SBH is said to be lucrative and open to anyone, regardless of past experience.

"Imagine taking back control, being in control of your time, cash flow, and quality of life. You know, those people that take vacations any time of the year. Those people playing

golf at one o'clock in the afternoon in the middle of the week. Those people driving the finest cars, living in the nicest neighborhoods, chances are they own their own business and they own their life. The good news is, you can too."

[SBH is] "a company where you can have little or no business experience or expertise. A company where you can work part time or full time. A company where you can work from the comforts of your own home. A company where you have an opportunity to make some real money. You have control to make what you're worth. Success by Health can change everything. The car you drive. The home you live in. The vacations you take. The control of your life."

"Be a part of a recession-proof market."

"Success By Health can be your PLAN B. You can either be in fear of these unstable times or you can have control. It's up to you."

20. SBH is said to embody the wisdom of the wealthy, who "do not trade time for money" but "use other people's time" and "other people's money" to generate "residual income" (Business Overview | Success By Health). Residual income is described as "passive income" that is paid to the Affiliate "whether or not they are 'working'" (Business Overview | Success By Health), where this income stream is said to be generated by the ongoing demand for coffee or other SBH products. As stated in the SBH Plan B video (2017-10-30 SBH Plan B): "Residual income is money that comes in over and over again, even if you don't work, and we can show you how to make it."

21. To start on the path to earning income with SBH, the first step is to sign on as an Affiliate and consider the enrollment pack options, shown in Figure 7. The new Affiliate can pay a \$49 fee or purchase a product pack for \$125 (Product Starter Pack), \$500 (Accelerator Pack) or \$1,995 (Super Accelerator Pack). As discussed further in Section VI, Affiliates are encouraged to buy the highest priced enrollment pack if they are seeking maximum rewards from the business opportunity. The size of the enrollment pack is said to be connected to one of the recruit's three self-determined "types" and desired outcome. As shown in Figure 8, the recruit is told they can choose among (1) earning supplemental income, (2) earning replacement income (i.e., income that would replace an existing job), or (3) obtaining "financial freedom."

22. Jay Noland, SBH Founder and CEO, discusses the financial possibilities in the SBH CEO's Company Vision Message (<https://successbyhealth.com/?u=successbyhealth>):

"The financial opportunity here with Success By Health is second to none. We provide a platform that's available for everybody. So whether you want to supplement your income to be able to pick one or two of your bills to get that paid from your Success By Health business, or if you want to replace your income. We know there are people that they really would love to come away from the job. They just need to be able to have the tools and resources to do so. We can help you with that. Or, if you'd like to achieve financial freedom, meaning you would like to be able to own your life from here on out in just a handful of years, to be able to have complete control financially, to be free. We want to provide that opportunity here with Success By Health for whatever your financial goals are."

Figure 5. The Problems with SBH Alternatives (Images from 2017-10-30 SBH Plan B)



Figure 6. SBH as the Superior Plan B Option (Images from 2017-10-30 SBH Plan B)



Figure 7. How to Get Started (Images from Business Overview | Success By Health)



Figure 8. Types of People (Image from Business Overview | Success By Health)



23. As depicted in Figure 9, the enrollment pack purchase is described as the first of four steps for the new SBH Affiliate. The second step is to become a “product of the product” through personal purchase and use of SBH products. As described in Section VI, this often translates to instructions to establish a personal auto-order that will continue on a monthly basis until the Affiliate initiates cancellation. While the Affiliate is technically not required to purchase product or establish an auto-order, sections V and VI describe the incentives and training that direct the Affiliate to purchase product on a month-to-month basis. The third and fourth steps are to build a team of downline Affiliates and follow SBH training, learning to train for “duplication.” In this context, duplication refers to the ability to bring in new recruits and train them to repeat one’s own actions, thereby building a downline organization that adheres to the “Four Steps to Success.” As explained in the SBH Fast Start System (2019-01-24 SBH_FastStartSystem_v20190115):

“The key to long term success is DUPLICATION. Duplication comes from putting together simple steps that can be followed and repeated by a large group of people.”

Figure 9. Four Steps to Success in SBH (Image from Business Overview | Success By Health)



24. To support duplication, SBH provides training materials for the new Affiliate, including the SBH Fast Start System (2019-01-24 SBH_FastStartSystem_v20190115). The Fast Start System provides documents, audio links and videos that include step-by-step instructions for promoting the SBH products and business opportunity. These materials include retail and prospecting scripts, which direct the new Affiliate to use specific, SBH-created language. The Fast Start System also includes messaging to promote recurring Affiliate purchases (2019-01-28 2_PowerOfAnAutoOrderProgram) and advice for establishing a one-year commitment with newly recruited Affiliates (1 Year Commitment Form). Affiliates

are instructed to use these SBH-provided materials and train their recruits to do the same. I will discuss training materials in detail in Section VI.

25. Affiliate compensation is determined by the SBH *Commission Plan*, which includes six compensation types (or “Phases”). A new version of the pay plan – *Commission Plan 2.0* – was introduced on August 1, 2019. This new version maintains the original compensation types and adds six additional sources of income. I discuss both versions of the *Commission Plan* in detail in Section V. The first source of compensation – retail profit – is contingent on customer demand for SBH products and the mode of purchase. The company’s retail profit projections (e.g., \$54,000 per year from 100 monthly customers) assume that customers will buy directly from an Affiliate and be willing to pay a price that exceeds the Affiliate’s purchase cost, even though customers can pay the same price as the Affiliate by purchasing through the Affiliate’s website or the company’s website. While an Affiliate can earn a small commission on the customer purchases made through his/her website (discussed further in Section V), Affiliates are encouraged to help the customer earn “free” products by converting them from customer to Affiliate status (discussed in Section VI). Furthermore, if a retail customer purchases product directly from the SBH website, the Affiliate – who may have introduced the customer to SBH products – receives no compensation from the transaction. Beyond retail, the remaining sources of compensation are based on the accumulation of purchase volume, largely generated through the recruitment of new Affiliates who purchase product and similarly recruit additional participants.

26. Recruitment is central to the SBH system and income projections. In a live presentation to SBH Affiliates and prospective recruits, Jay Noland explains the financial benefits he has derived from recruiting (2019-04-15 SBH Live Group Presentation with CEO Jay Noland):

“Over two million people are part of my team, and every time they do something, I make some money. Now how many of you all would like to have two million people pitching in on your car payment? Who would like to have over two million people pitching in on your mortgage? How many of you think you wouldn’t have a mortgage? How many of you think you wouldn’t have a car payment? What if all I did during the course of the year was just made one dollar off of the efforts of two million people, what would that pay me?”

27. The “Power of Ten” is the most frequent articulation of the recruitment imperative.¹¹ According to the Power of Ten, new Affiliates are told they will accumulate SBH commissions and bonuses when they purchase an enrollment pack, establish an auto-order, recruit 10 additional Affiliates, and train those Affiliates to repeat that process. Again, these steps are not required to earn compensation, but Affiliates are trained to follow these steps to maximize returns from the SBH *Commission Plan* (discussed further in

¹¹ The Power of Ten is discussed frequently, in videos (including 2017-10-31 Lets Talk Coffee w Jay Noland (Private Video Released), 2019-04-15 SBH Live Group Presentation with CEO Jay Noland, 2018-06-04 SBH Money Talk - Financial Freedom with SBH, and 2017-11-07 SBH Commission Plan), in documents (such as Business Overview | Success By Health and 2019-01-28 9_SBHGroupPresentationScriptCTM) and on the company website (<https://successbyhealth.com/affiliate-details/?u=successbyhealth>). I will address this again in Section V.

Sections V and VI). This behavior is said to build a 10-by-10 structure where the Affiliate's 10 recruits each bring in 10 (100 new Affiliates), who each bring in 10 (1,000 new Affiliates), who each bring in 10, and so on. As Mr. Noland explains to recruits (2019-04-15 SBH Live Group Presentation with CEO Jay Noland): "All you got to do is find ten other people who want to do the same. Now we get into residual income." If executed properly, this process is said to turn the new Affiliate into a "coffee millionaire" (2017-11-07 SBH Commission Plan).

28. SBH Affiliates can earn compensation exclusively through recruitment and internal purchases, without any verified retail sales to ultimate users. SBH repeatedly highlights high-income scenarios that are based exclusively on ongoing recruitment and internal monthly purchases. As with enrollment packs, month-to-month Affiliate purchases trigger compensation even if those products are never sold to a single ultimate user.¹²

29. Beyond the compensation available through the *Commission Plan*, SBH advertises luxury trips as a reward for successful engagement with the firm. To qualify for these trips and earn maximum benefits from the compensation structure, the company encourages Affiliates to attend SBH seminars and events. The SBH Fast Start System describes the importance of paying to attend training events (2019-01-24 SBH_FastStartSystem_v20190115):

"A next key step into growing your business is major training events. The fastest way, again, this is the fastest way to build large, long-term momentum with your team is to take as many people as possible on your team to our major training events."

"If you're looking to replace your income or financial freedom, when we're done, when you're done listening to this recording, it would be good to stop and then go get registered right now before moving on."

Training-related expenses include event tickets, travel, accommodations, and foregone income. Sections VI includes further discussion of Affiliate expenses.

30. While there is limited discussion of SBH Affiliate expenses (i.e., the size of the enrollment pack as an initial investment), income and lifestyle claims are integrated into nearly all of the reviewed SBH promotion, training and compensation-related materials. Claims include specific income projections (e.g., the specific steps to become a "coffee millionaire") and general representations of financial freedom, time freedom, and lifestyle rewards. SBH illustrations project income of over \$5 million in bonuses and over \$1 million per year, or even per month, in commissions for proper execution of the Power of Ten strategy (see Section V and VI, *infra*). Disclaimers sometimes accompany representations, where disclaimer language typically states that there is no guarantee of any particular income level and that individual results may vary significantly. While income and lifestyle claims will be embedded in the *Commission Plan* and Affiliate training discussion (Sections V and VI), Section VII will specifically address SBH income representations and disclaimers.

¹² Recall that an Affiliate purchase is not considered an ultimate user purchase unless that purchase is independent of the individual's pursuit of rewards in the business opportunity (i.e., the purchase is not motivated by their desire to earn rewards through the compensation structure).

I will contrast SBH claims with the realities of the SBH compensation structure and available information on Affiliate outcomes, drawn from SBH transaction data.

31. SBH's materials contain what appear to be attempts at "safeguards" that might limit risk to consumers. I discuss these in Section VIII. The *Terms of Use* document, for example, includes a statement on not making income claims, but there is no indication that this policy is effective or enforced as company materials and SBH leaders themselves contradict the policy in publicly available materials. There are no explicit policies or procedures that would serve to limit risk to consumers.

IV.2 Summary of Findings

32. I find that SBH focuses its training, advancement, and earnings on the recruitment of new SBH Affiliates and the purchases made by those Affiliates. Recruitment-centered training and incentives dwarf those associated with retail to ultimate users. When SBH does address retail, it does so with retail profit projections that are built on erroneous or unsupported statements. Projections assume that customers will be continually willing to pay a price that exceeds the Affiliate's purchase cost, ignoring the fact that non-Affiliate customers can access the lower wholesale price (i.e., the same price paid by Affiliates) through the Affiliate's website or the SBH website. Recruitment incentives and training undermine retail activity, as Affiliates seek to convert customers into SBH Affiliates.

33. I find that SBH's compensation scheme directly rewards recruiting. SBH Affiliates can earn compensation exclusively through recruitment and internal purchases without any verified retail sales to ultimate users. Enrollment pack bonuses are one example of the disconnect between Affiliate compensation and product sales, as the Affiliate earns immediate commission from the purchase of an enrollment pack whether the products in the pack are ever sold to customers or not. While it is commonly understood that an MLM firm cannot make a direct payment for recruitment of a new distributor, firms sometimes use enrollment pack bonuses to indirectly pay for such recruitment. In this way, the SBH enrollment pack bonus serves as a thinly veiled recruitment reward. Affiliates are trained and encouraged to buy and recruit and to train others to do the same, and the SBH compensation system will theoretically pay millions of dollars in rewards without a single dollar of product sold. SBH does not even have the pretense of a policy or procedure that would require a minimum level of retail sales.

34. I find that SBH is promoted as a legitimate business opportunity but is, in practice, an endless chain offer. In the chain, products are purchased merely as a way to participate in the pyramid scheme payoff structure. Relative to other pyramid schemes I have reviewed, SBH's marketing program is particularly egregious. MLM firms have been alleged to have unlawful compensation structures when they employed a 2-by-2 or 3-by-3 structure, as in *FTC v. Vemma Nutrition Company*, Case 2:15-cv-01578-JJT, and *FTC v. AdvoCare International*, Case 4:19-cv-00715. In contrast, SBH's 10-by-10 structure is especially aggressive and deceptive given that so few will find enough recruits to move out of a loss position. Positive profit relies on the ongoing ability to recruit individuals into the system but the recruitment targets ($10 + 10^2 + 10^3$ and so on) will be unattainable for the overwhelming majority of participants. For example, one advertised bonus – said to be

attainable by any Affiliate who adheres to the system – would require the recruitment of 111,110 (10 + 100 + 1,000 + 10,000 + 100,000) total downline Affiliates for *each* person who earns the bonus. Such a structure is expected to generate losses for a minimum of 90 percent of participants, and the loss rate may be as high as 99 percent (see Section V and Appendix C).

35. As the SBH compensation structure necessarily creates a pyramid scheme, income representations associated with this structure are inherently deceptive. That said, SBH employs income claims that create additional risk of harm, as consumers who rely upon these claims may be willing to make significant investments in pursuit of advertised earnings. SBH materials and representatives present testimonials and income projections that do not properly reflect potential profit or the likelihood of profit. SBH claims that those who adequately demonstrate belief, commitment and adherence to the “proven” system will achieve the projected outcomes, independent of market conditions, timing of entry, or the number of other SBH Affiliates. Disclaimers cannot adequately counteract the misleading nature of SBH misrepresentations. In stark contrast to the firm’s claims and representations, SBH transaction data show that at least 94% of SBH purchases (in dollars) are made by SBH Affiliates and that over 98% of Affiliates pay in more to SBH than they receive back in commissions, leaving the overwhelming majority in a loss position (see Section VII.2, *infra*, for more discussion of SBH transaction data and Affiliate outcomes).

36. While MLM programs often include “safeguard” policies¹³ that might curb potential harm by ensuring a minimum amount of genuine retail activity, I find that SBH’s policies represent the antithesis of safeguards. For example, SBH prohibits refunds which would allow an Affiliate to sell back unsold product and instead articulates penalties an Affiliate would face if they attempt to return products. The Founders program, addressed in Section V, raises additional concerns regarding the explicit connection between recruitment, personal purchases and compensation within SBH. The Founders program is yet another example of disregard for safeguards that might, in theory, ensure some minimal level of retail sales.

37. I find that the SBH compensation structure incentivizes recruitment of new Affiliates and Affiliate purchases above sales to ultimate users and that projections – of the number of retail customers and the number of new Affiliates – are unfounded and deceptive. Having reviewed the newest version of the SBH *Commission Plan* and a 2019 SBH video which introduces additional incentives (SBH Power2 and VOZ Travel Training), my findings and conclusions are unchanged. SBH *Commission Plan 2.0* continues to incentivize recruitment of new Affiliates and internal purchases above all else. Affiliates are explicitly paid for recruiting new Affiliates, and those payments are not contingent, in any way, on bona fide retail sales. SBH continues to misrepresent likely earnings and has not established new policies or structures that might minimize the risk for consumer injury. The 2019 video (SBH Power2 and VOZ Travel Training) and relaunched Founder’s Program (discussed in Section V) demonstrate that the company is continuing to encourage and reward Affiliate

¹³ I am not commenting on whether typical safeguard policies are effective or enforced, but only on the contrast between SBH policies and those that are common in the MLM industry. Safeguard policies are discussed in detail in Section VIII.

recruitment and expenditures, where that activity is disconnected from genuine demand for SBH products.

38. It is clear from my review of SBH's marketing, training, and incentive structure that SBH uses its deceptive and inflated income claims to drive recruiting, which is the hallmark of an illegal pyramid. The primary route to rewards is through recruitment of new Affiliates and pay-to-play purchases by new and existing Affiliates. Income and lifestyle representations are misleading and do not accurately depict realized or expected Affiliate profit or the likelihood of profit. Safeguard policies, as they currently exist, cannot sufficiently correct for the emphasis on recruitment and incentivized internal expenditures. In fact, SBH policies may exacerbate consumer harm.

39. The totality of evidence, outlined in detail in subsequent Sections, indicates that SBH is operating as a pyramid scheme according to both the general economic characterization of a pyramid scheme and the *Koscot* criteria discussed in paragraphs 10-13. It is important to note that this finding does not preclude the existence of some genuine retail sales in SBH but suggests that the intended mode of operation treats such sales as incidental, as a byproduct of Affiliate recruitment. Consumers are being lured into the SBH business opportunity with misleading income and lifestyle representations and, as Affiliates, they are trained to repeat those misrepresentations to prospects. If they ultimately join and follow the pay-and-recruit incentive and training structure, they are participating in an illegal recruitment chain that will leave the vast majority in a loss position.

40. Ultimately, the SBH marketing program and representations of that program mislead consumers into a pyramid scheme that will deliver losses to the vast majority of participants, by design. These losses are attributable to the structure and execution of the SBH program, rather than the actions or failure of individual participants.

V. Commission Plan Analysis

41. The SBH *Commission Plan* establishes the financial incentive structure for Affiliates. I have reviewed the *Commission Plan* and the more recent version, *Commission Plan 2.0*, introduced in August of 2019. I begin this Section with a discussion of the original SBH *Commission Plan*, which came into effect in the late summer or early fall of 2017, and address *Commission Plan 2.0* at the end of this Section. Figure 10 shows a compensation overview, based on the original SBH *Commission Plan*. The six forms of compensation in the *Commission Plan* are sometimes referred to as the "6 Phases." Table 1 provides a summary of definitions and examples of each Phase. Figures 11-22 (*infra*) provide images that include descriptions and examples for each compensation Phase. I will discuss each in turn, referencing the images, Table 1, and related video content produced by SBH.

42. As depicted in Figure 10 and described in Table 1, the first way an SBH Affiliate can earn money is through retail sales, known as Phase 1. Profit can be earned through online or offline retail transactions, but Phase 1 only refers to the offline transactions. Recall that online transactions occur when a customer makes a purchase directly through an Affiliate's SBH website (with the payment processed by, and product shipped directly from, SBH to the customer). Offline transactions occur when an Affiliate buys inventory from SBH and then resells that inventory, person-to-person, to a retail customer.

Figure 10. Commission Plan Overview (Image from Business Overview | Success By Health)



43. Founder and CEO Jay Noland walks the listener through the mechanics of the SBH *Commission Plan* in a pre-recorded video (2017-11-07 SBH Commission Plan) and begins with a discussion of retail profit. Mr. Noland begins by assuming that the Affiliate purchases a box of coffee for \$20, sells it for \$35, and sells three boxes of coffee per month to each customer. As in Figure 11, Mr. Noland then imagines the profit that would be earned from 100 customers who will make monthly purchases for a full year, generating \$54,000 in income for the Affiliate. I will discuss these hypothetical income scenarios after introducing the “6 Phases” of the *Commission Plan*.

Table 1. SBH Types of Compensation (based on Business Overview | Success By Health)

Type (Phase)	Description	
(1) Retail Sales	If an Affiliate purchases the product at “wholesale price” and resells that product to an offline retail customer for a higher price, the Affiliate earns the difference between the retail and wholesale price. An SBH example of retail profit is shown in Figure 11. The initial \$45 estimate assumes an offline customer who purchased 3 boxes of coffee a month, where the Affiliate purchased each box for \$20 and sold it for \$35. The \$45 is simply multiplied by 10, 20 and 100 customers per month, to arrive at a possible yearly retail profit of \$54,000.	
(2) Auto-Order Bonuses	Product credit is earned based on auto-order volume, which includes the Affiliate’s personal volume, customer volume, and downline volume. 5% product credit is earned on personal auto-order purchases. \$65 in product credit is earned if 5 direct Affiliates or customers are on a minimum of \$60 monthly auto-order. With 10 such orders, the Affiliate earns \$130 in product credit. As described in Figure 12, this bonus rewards the Affiliate “for being on auto-order” and for maintaining auto-order customers and downline Affiliates.	
(3) Accelerator Bonuses	If an Affiliate recruits a new Affiliate who purchases a \$500 Accelerator Pack, the recruiter earns \$125. If that new Affiliate instead purchases a \$1,995 Super Accelerator Pack, the recruiter earns \$400 or \$500 (changed over time). If the Affiliate brings in new Affiliates who collectively purchase at least 3 of these packs within the first 7 days of enrollment, the recruiter earns an additional \$50 credit. As shown in Figure 13, Accelerator Bonuses are said to “put money in their pockets fast.”	
(4) Tier Commissions	The Affiliate earns 10% on his/her personal orders and any customer orders made through their SBH Affiliate website. This is known as Tier 0 commissions. The Affiliate can also earn commissions on their downline “tiers,” as shown in the image on the right (image from https://successbyhealth.com/affiliate-details/?u=successbyhealth). The lower tiers are associated with the following commission levels: Tier 1, 10%; Tier 2, 6%; Tier 3, 4%; Tier 4, 3%, and Tier 5, 2%. Eligibility for certain tiers depends on the size of the enrollment pack purchased or other qualifications, as described below. Overall Tier Commissions will depend on the number of downline Affiliates and the volume associated with each Affiliate, as shown in Figures 14-18. Tier Commissions are the form of income Mr. Noland refers to when he discusses the path to becoming a “coffee millionaire.”	
(5) Generation Infinity Bonus	This bonus is paid to an Affiliate who advances to Super Business Affiliate (SBA) by reaching \$15,000 in monthly purchase volume. This bonus pays 1% on downline purchase volume, down to the next qualified SBA. As the SBA continues to rank advance, this percentage can rise from 1% to 4%. As shown in Figure 19, this bonus is said to pay on “infinite generations through developing strong teams.”	
(6) \$1M/\$5M BAM Bonus	BAM bonuses range from \$1,000 to \$5 million and are based on the Power of Ten and minimum monthly purchases of \$100 or \$500 per Affiliate. Figures 20-22 show the number of downline Affiliates required to earn each bonus level. For example, an Affiliate earns the \$1 million (or \$5 million) BAM Bonus by recruiting $10^1 + 10^2 + 10^3 + 10^4 + 10^5 = 111,110$ Affiliates who each have personal purchases of \$100 (or auto-order purchases of \$500) per month.	

Figure 11. Potential for Retail Profit (Image from Business Overview | Success By Health)



44. In the 2017 compensation explanation video, Mr. Noland turns from retail profit to auto-order bonuses, known as Phase 2. Auto-order bonuses award product credit for monthly purchase commitments, as described in Table 1 (*supra*) and shown in Figure 12. According to Noland:

“If you set up an auto-order, that means an order that’s going to come out every single month, you pick the day when you want it to come out and it’s just going to automatically run. So you go pick the products you want, put in your credit card information, it will run and come right to your doorstep.”

“The auto-order program is so strong because of the fact that it’s going to give you the ability to earn every time you order and to also get free product, and also gives you the ability to get free shipping.”

This bonus is said to allow Affiliates to “get their money back from their own purchases,” though the bonus takes the form of product credit and does not provide the opportunity to receive cash or other direct payment. I address training related to auto-orders in Section VI, as SBH has specific materials dedicated to “the power of an auto-order.”

Figure 12. Auto-Order Bonuses (Image from Business Overview | Success By Health)

Auto-Order Bonuses
Loyalty rewards on yours and your referrals' recurring purchases

This program rewards you for personally being on an Auto-Order and also rewards you for maintaining Auto-Order Customers and Affiliates you refer!

Here's How It Works:

- Receive **5%** of personal Auto-Orders back as product credits.
- Help **get 5** (or more) **Customers or Direct Affiliates** on at least a \$60 monthly Auto-Order and **receive a \$65 product credit** the following month.
- Help **get 10** (or more) **Customers or Direct Affiliates** on at least a \$60 monthly Auto-Order and **receive a \$130 product credit** the following month.

* Auto-Order is not required to earn commissions

SUCCESS BY HEALTH
6 Phase Plan

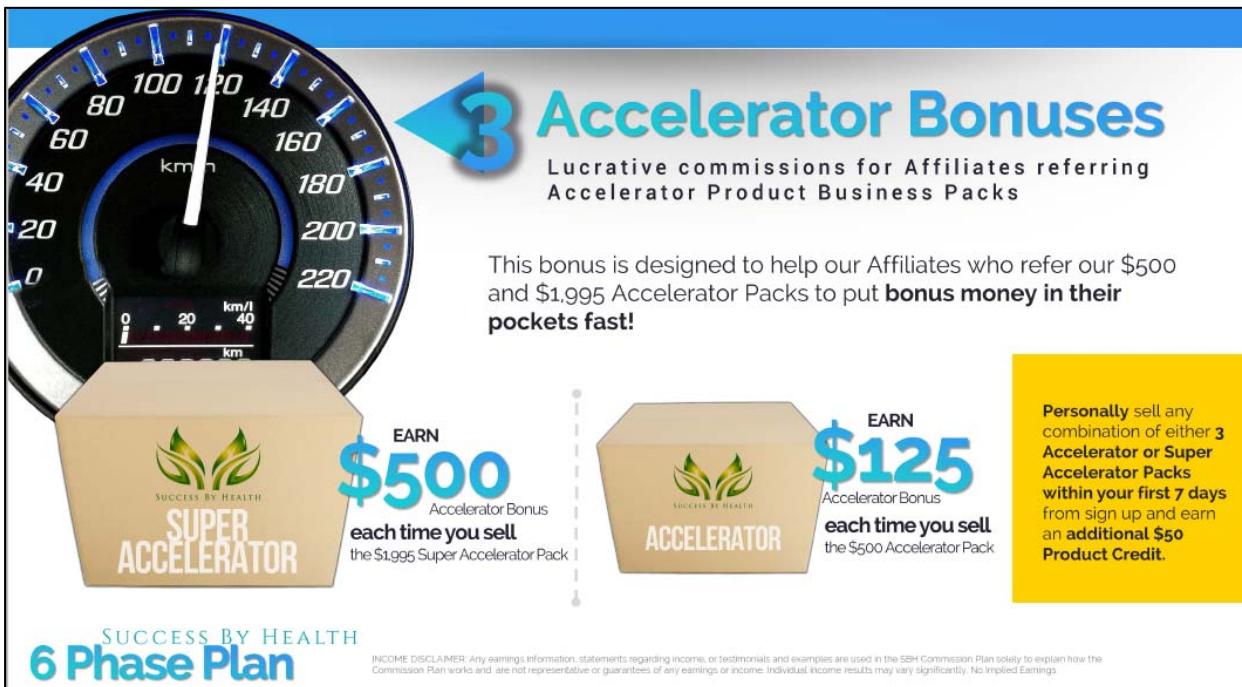
INCOME DISCLAIMER: Any earnings information, statements regarding income, or testimonials and examples are used in the SBH Commission Plan solely to explain how the Commission Plan works and are not representative or guarantees of any earnings or income. Individual income results may vary significantly. No Implied Earnings.

45. Mr. Noland then describes Phase 3, the Accelerator Bonus, which will “help you make some quick accelerator commissions fast” (2017-11-07 SBH Commission Plan). Mr. Noland explains the connection between an Affiliate’s personal enrollment pack purchase, their recruits’ enrollment pack purchases, and personal compensation:

“Let’s just say you started with the \$500 Accelerator Pack, which we suggest you do if you want to really build a real solid business. You don’t have to. You can get started with SBH, by the way, this whole game, get started, the whole party gets started for just \$49, your whole business gets started for \$49. That’s it, and that’s an annual fee. But imagine this, if you step up to the plate and you start building a real home-based business 500 bucks, and you go out there and you personally refer three other people, and they’re doing 500 each, look what happens here.”

Mr. Noland explains that this generates $\$150*3 + \50 (product credit), for a total of \$500 in rewards if done within first 7 days, so “now your money is back in your pocket.” Figure 13 shows similar rewards, with \$125 and \$500 in bonuses for the sale of an Accelerator and Super Accelerator Pack, respectively, and the potential for an additional \$50 product credit.

Figure 13. Accelerator Bonuses (Image from Business Overview | Success By Health)



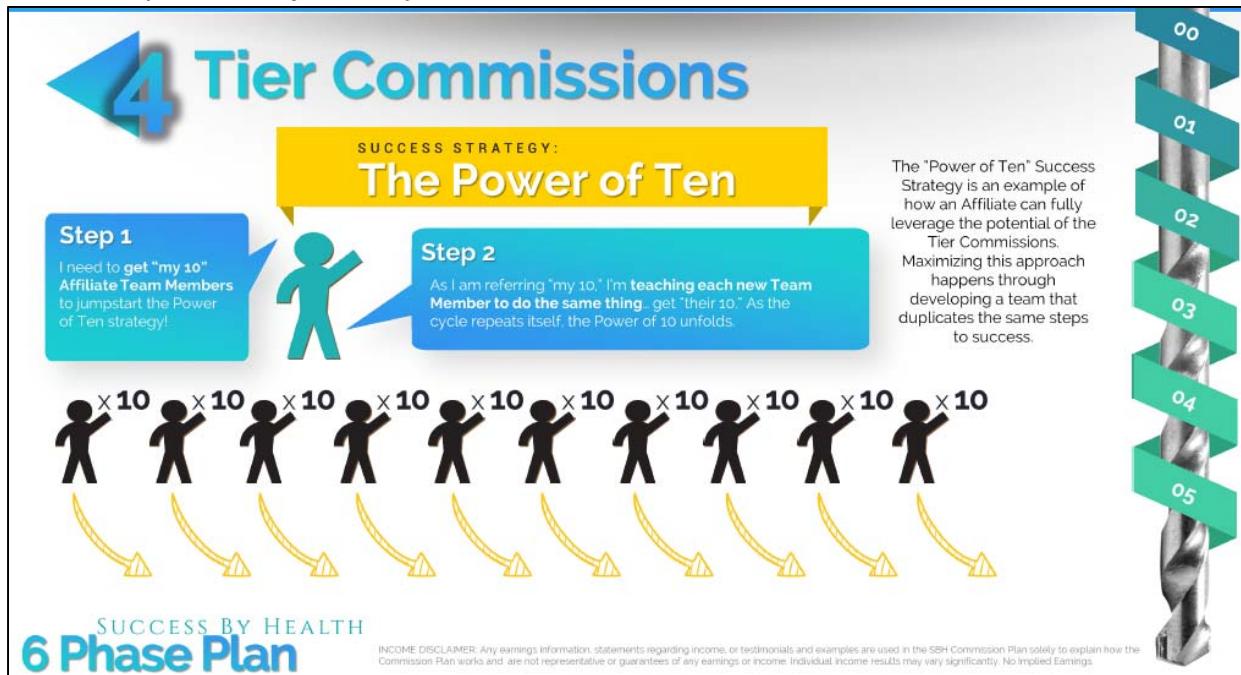
46. Mr. Noland then walks through the projected income that is paid through Tier Commissions (Phase 4), where Tier 0 includes the Affiliate and his/her personal customers, Tier 1 includes the Affiliate's personal recruits and their customers, Tier 2 is the next level of recruits and their customers, and so on. Tier 0 volume pays 10% commission, and the percentages for Tiers 1-5 range from 10% to 2%, as described in Table 1 (*supra*). (These percentages decreased in *Commission Plan 2.0*, which I discuss below.) An Affiliate is only eligible to earn Tier Commissions from the bottom two tiers if they have purchased an enrollment pack (Accelerator or Super Accelerator) or if they have recruited at least two new Affiliates and achieved a minimum monthly volume threshold. Specifically, the Affiliate must accumulate "\$15,000 in team affiliate sales in one calendar month with no more than \$7,500 in sales coming from any one team" (2019-01-28 12_SBH6PhaseCommissionPlan). As will be described in Section VI, Affiliates are often encouraged to purchase an Accelerator Pack to ensure that this qualification requirement is satisfied.

47. Tier Commissions are directly tied to the "Power of Ten," as shown in Figure 14:

"The 'Power of Ten' Success Strategy is an example of how an Affiliate can fully leverage the potential of the Tier Commissions. Maximizing this approach happens through developing a team that duplicates the same steps to success."

"Step 1" is to get "my 10" and "Step 2" is to teach "each new Team Member to do the same thing" and get "their 10." As this continues, the "Power of 10 unfolds."

Figure 14. Overview of Tier Commissions & The Power of Ten (Image from Business Overview | Success By Health)



48. Mr. Noland explains how Tier Commissions would generate monthly commission checks if the Affiliate recruits into a 10-by-10 structure (2017-11-07 SBH Commission Plan):

"Well, if you've got 10 doing 500 [in monthly product purchase volume] across the board, and then they teach these 10 to do 500, when you get right here to tier two, I'm going to give you a simple theoretical example. If these 10 are only doing 500 who teach these 10 to do 500, that's going to pay you about \$3,500 a month, just with a 10-by-10. If that just goes one more tier, if that just comes down to here, and everybody is just doing 500. These folks here are just doing 500, that's going to jump you to over 20,000 plus dollars per month, while helping all of your front tier people make about \$3,500 a month. And when that goes another tier, it just gets ridiculous. We start breaking coffee millionaires on this fourth tier in this example."

These same commission numbers are shown in the "Accumulative Commission" column in Figure 16. Figure 15 shows Tier Commission numbers if the downline Affiliates each purchase \$100 per month, rather than \$500.

49. To explain Mr. Noland's Tier Commission calculations, assume that an Affiliate recruits 10 new Affiliates who purchase \$500 per month. This is $\$500 \times 10 = \$5,000$ in Tier 1 volume, which generates $\$5,000 \times 10\% = \500 per month in Tier 1 Commissions. If these 10 Tier 1 Affiliates each bring in 10 new recruits who maintain the same purchase volume, this results in $100 \times \$500 = \$50,000$ in monthly product volume and $\$50,000 \times 6\% = \$3,000$ in Tier 2 Commissions. If we add the \$500 in commissions from Tier 1, Tier Commissions now total \$3,500 per month. If those 100 Tier 2 participants each recruit 10 new Affiliates who

also purchase \$500 per month, this generates an additional $1,000 * 500 * 4\% = \$20,000$ in Tier Commissions from Tier 3. If this 10-by-10 recruitment continues, Table 16 shows the potential for becoming a “coffee millionaire” when 10,000 downline Affiliates are recruited into Tier 4 (i.e., $\$173,500 * 12 \text{ months} = \$2,082,000$) and the potential for over \$1 million per month when 100,000 Affiliates are recruited into Tier 5.

Figure 15. Tier Commissions with \$100 Monthly Purchase per Affiliate (Image from Business Overview | Success By Health)

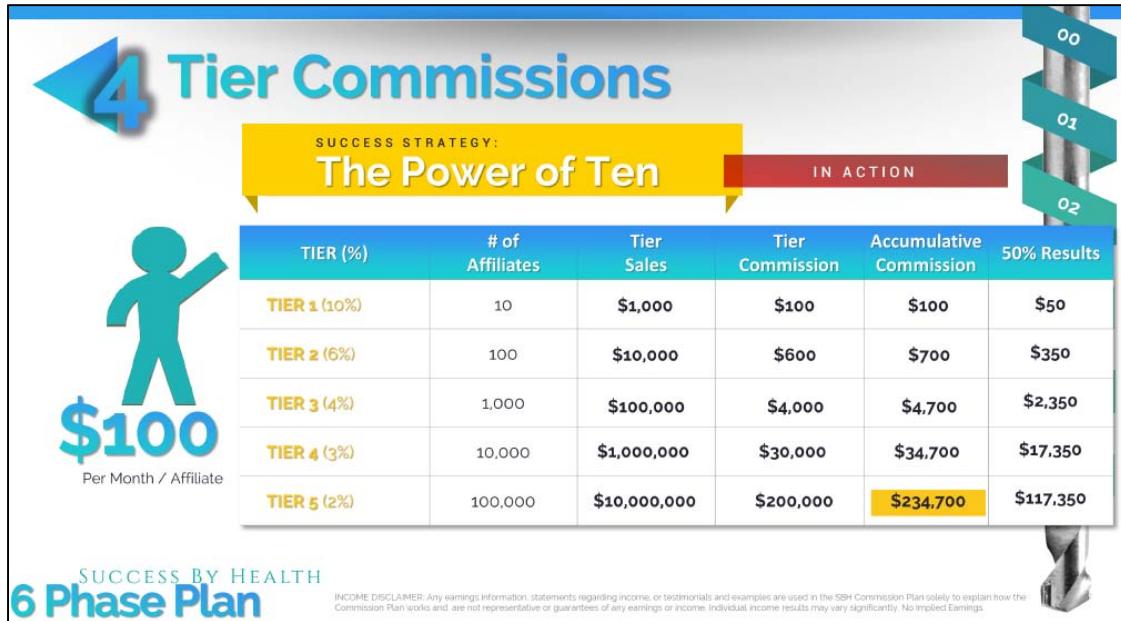


Figure 16. Tier Commissions with \$500 Monthly Purchase per Affiliate (Image from Business Overview | Success By Health)



50. Figures 17 and 18 provide another example of these Tier Commission projections, which rely on ongoing Affiliate recruitment into a 10-by-10 structure and corresponding Affiliate auto-orders. These projections are based exclusively on Affiliate purchases and are not dependent on the sale of product to bona fide ultimate users. One articulation of this fact is shown in Figure 18, which states: "This is an example of SBH Affiliates who each place just a \$500 monthly order each." The SBH Affiliate *Commission Plan* (2019-01-28 12_SBH6PhaseCommissionPlan) describes the income potential from Tier Commissions this way:

"Our 6-Tier Bonus program provides for UNLIMITED Income. You can make as much money as you want. There is NO LIMIT on the width of the affiliates you can refer to the program."

Figure 17. 6-Tier Commissions with \$100 Affiliate Monthly Orders (Image from 2018-05-05 SBH Business Overview B-2)

6-Tier Commission Payout						
Simple <u>Theoretical</u> Example						
THE POWER OF 10						
Level (%)	# Of Affiliates	\$100 monthly per Affiliate	Monthly Commission	Accumulative Commission \$	50% Results	Unlimited Potential
1 (10%)	10	1,000	\$100	\$100	\$50	
2 (6%)	100	10,000	\$600	\$700	\$350	
3 (4%)	1,000	100,000	\$4,000	\$4,700	\$2,350	
4 (3%)	10,000	1,000,000	\$30,000	\$34,700	\$17,350	
5 (2%)	100,000	10,000,000	\$200,000	\$234,700	\$117,350	

This is an example of SBH Affiliates who each place just a **\$100** monthly order each.

Figure 18. 6-Tier Commissions with \$500 Affiliate Monthly Orders (Image from 2018-05-05 SBH Business Overview B-2)

6-Tier Commission Payout						
Simple <u>Theoretical</u> Example						
THE POWER OF 10						
Tier (%)	# Of Affiliates	\$500 Monthly per Affiliate	Monthly Commission	Accumulative Commission \$	50% Results	Unlimited Potential
1 (10%)	10	5,000	\$500	\$500	\$250	
2 (6%)	100	50,000	\$3,000	\$3,500	\$1,750	
3 (4%)	1,000	500,000	\$20,000	\$23,500	\$11,750	
4 (3%)	10,000	5,000,000	\$150,000	\$173,500	\$86,750	
5 (2%)	100,000	50,000,000	\$1,000,000	\$1,173,500	\$586,750	

This is an example of SBH Affiliates who each place just a **\$500** monthly order each.

51. The next phase of compensation in SBH is the Generation Infinity Bonus, or Phase 5. Eligibility for this bonus requires the Affiliate to rank advance to Super Business Affiliate by generating \$15,000 in monthly volume, with no more than \$7,500 from any one team (note this was one of the ways to qualify for full Tier Commissions). This requires the Affiliate to recruit at least two downline Affiliates to achieve this bonus. As shown in Figure 19, you earn this bonus through four downline “generations” of Super Business Affiliates. Since not all downline members will have achieved this rank, this bonus is said to have the potential to pay past five tiers, “potentially to infinity.”

Figure 19. Generation Infinity Bonus (Image from Business Overview | Success By Health)



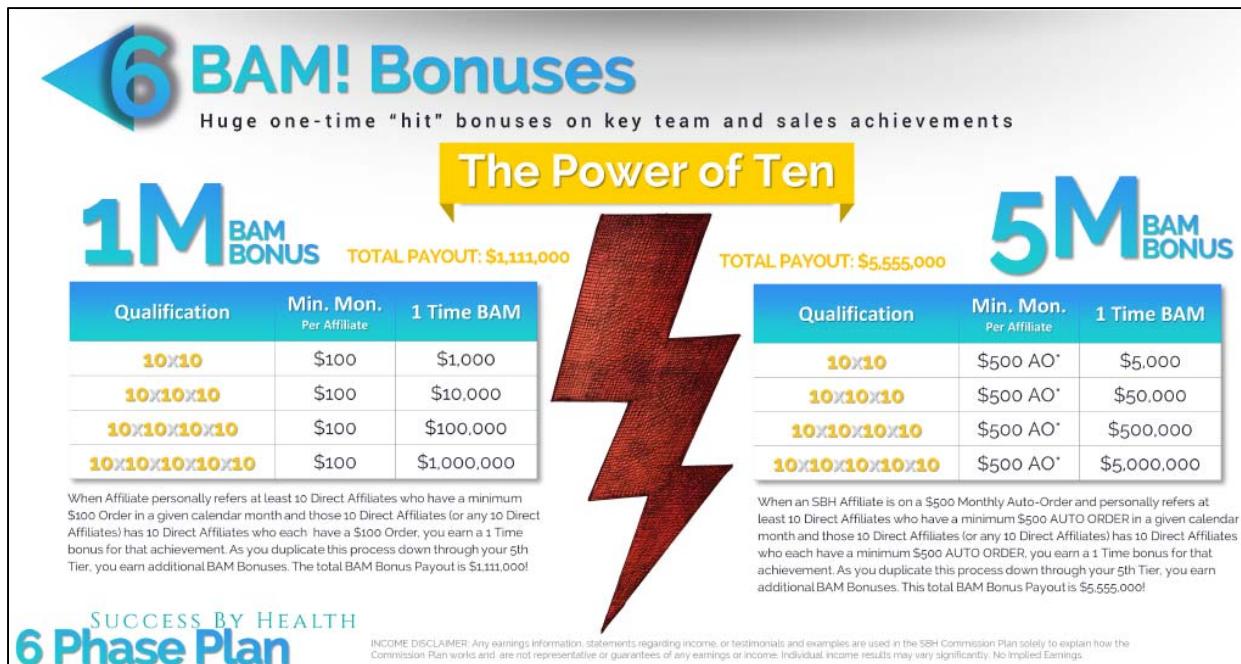
52. The last of the six compensation phases in the original SBH *Commission Plan* is the BAM Bonus. This bonus, depicted in Figure 20, is also built on a combination of the Power of Ten and auto-order purchases made by Affiliates recruited into the 10-by-10 structure. These bonuses are said to reach a total \$1,111,000 if the 10-by-10 structure builds to sufficient depth and each new Affiliate purchases \$100 per month. If each new Affiliate purchases \$500 per month, BAM Bonuses could be \$5,555,000.

53. Mr. Noland discusses these bonuses in his Compensation Plan video (2017-11-07 SBH Commission Plan):

“It’s very simple. It goes back to that Power of Ten. That’s you, here’s your mission. Find one, two, three, four, five, six, seven, eight, nine, 10. Find two, 10 other Affiliates and here’s all you got to do, and every one of you can do this. If you can’t do this, there’s something going on, cause this is simple. You’ve got to find 10 who can all do at least \$100 across the board. Every month, a \$100 order.”

"Then these 10 help 10 do the same thing. So when you've got these 10, you've got 100 who are all just doing 100, what we're going to do is pay you a BAM Bonus, extra on top of the compensation plan, \$1,000. For a 10-by-10, just moving five boxes of coffee or \$100. Are you ready, BAM! That just hit you, that quick. Now here's the power of how to get to a million. How do we help people make a million dollars additional bonus? We just start focusing on the people that we're first working with to help them get the \$1,000 bonus. This is the whole driving force behind the plan. Help these 10 now get \$1,000, so when we help these 10, they're going to start working with each one of their 10 to do the same thing. They're going to see you did it, they're going to say 'I can do it.' So when those 10 get 10, they, these 10 are all going to get the 1,000, so they're all going to get a \$1,000 BAM Bonus, BAM. But then you, as soon as you help them get 10 to get 10, now that drops down to ... 1,000 Affiliates, here's what you get, \$10,000 BAM Bonus."

Figure 20. BAM! Bonuses (Image from Business Overview | Success By Health)



54. Mr. Noland continues by focusing on the connection between additional downline recruitment, monthly Affiliate purchases, and the largest BAM Bonuses:

"Now, these people [the newest recruits], we've got to focus on getting them get the \$1,000. When they get the \$1,000 it's going to push this thing down, right? And when they push it down they get the \$1,000, you're going to pick up a \$100,000."

"Now, we're working with these people, right? And these people, what are we working with? To help them get the \$1,000. So when we help that next tier get the \$1,000, so these people right here, when they get the \$1,000, guess what? Now they're going to get the 1,000 but you're all the way up here. These people picking up the 1,000, these people picking up the 10,000, these people here picking up the 100,000, and you're picking up the what? One million dollars."

"How did it happen? You just simply helping these 10 people sell five boxes of coffee, or order five boxes of coffee, and them doing the same thing. We take that down five tiers, that's a \$1,111,000 in BAM Bonuses. Now if that isn't a serious commission plan, I don't know what is."

55. Figures 21 and 22 show similar representations of BAM Bonuses, referred to as "Retirement Bonuses." As with the Accelerator Bonuses and Tier Commissions, BAM Bonuses are based on Affiliate recruitment and Affiliate purchases and are structurally independent of sales to retail customers. While Mr. Noland, at times, mentions selling the product, sales are not required to earn rewards and training instructions to "be a product of the product" compete with the limited incentive to devote time and energy to retail.

Figure 21. \$1M BAM Bonus (Image from 2018-05-05 SBH Business Overview B-2)

\$1 Million+ BAM Bonus

This Bonus is designed to provide you with the opportunity for relatively fast lump sum bonuses and eventually a \$1,000,000 Retirement Bonus.

Qualification	Min Monthly Volume Per Affiliate	1 Time BAM BONUS
10 x 10	\$100	\$1,000
10 x 10 x 10	\$100	\$10,000
10 x 10 x 10 x 10	\$100	\$100,000
10 x 10 x 10 x 10 x 10	\$100	\$1,000,000

When Affiliate personally refers at least 10 Direct Affiliates who have a minimum \$100 Order in a given calendar month and those 10 Direct Affiliates (or any 10 Direct Affiliates) has 10 Direct Affiliates who each have a \$100 Order, you earn a 1 Time bonus for that achievement. As you duplicate this process down through your 5th Tier, you earn additional BAM Bonuses. The total BAM Bonus Payout is \$1,111,000!

Figure 22. \$5M BAM Bonus (Image from 2018-05-05 SBH Business Overview B-2)

\$5 Million+ BAM Bonus

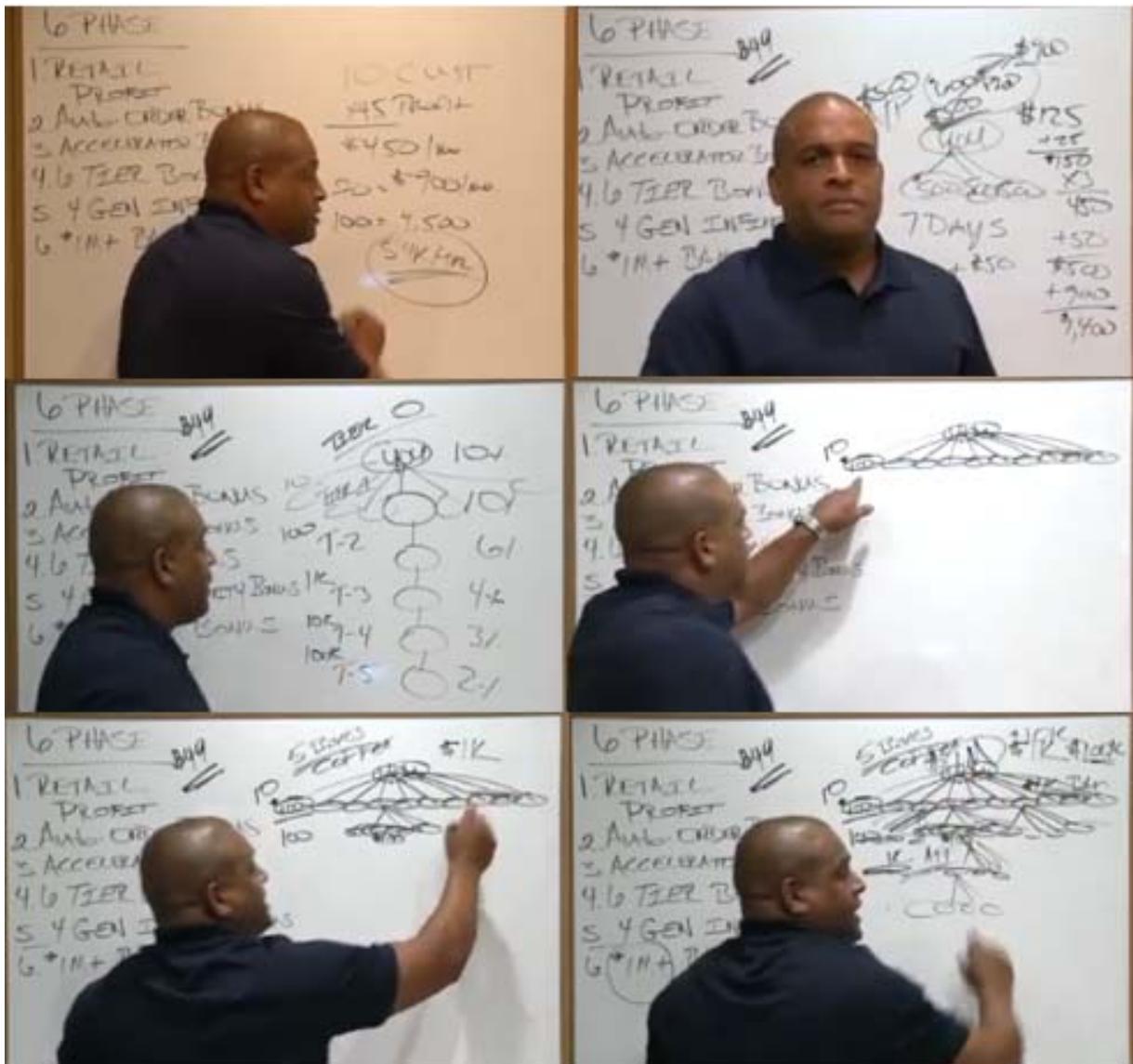
This Bonus is designed to provide you with the opportunity for relatively fast lump sum bonuses and eventually a \$5,000,000 Retirement Bonus.

Qualification	Min Monthly A/O Volume Per Affiliate	1 Time BAM BONUS
10 x 10	\$500	\$5,000
10 x 10 x 10	\$500	\$50,000
10 x 10 x 10 x 10	\$500	\$500,000
10 x 10 x 10 x 10 x 10	\$500	\$5,000,000

When an SBH Affiliate is on a \$500 Monthly Auto-Order and personally refers at least 10 Direct Affiliates who have a minimum \$500 AUTO ORDER in a given calendar month and those 10 Direct Affiliates (or any 10 Direct Affiliates) has 10 Direct Affiliates who each have a minimum \$500 AUTO ORDER, you earn a 1 Time bonus for that achievement. As you duplicate this process down through your 5th Tier, you earn additional BAM Bonuses. This total BAM Bonus Payout is \$5,555,000!

56. As Mr. Noland describes the six types of compensation (or 6 Phases), he draws images and numbers that match the discussion above. Figure 23 provides screenshots from this video (2017-11-07 SBH Commission Plan). Mr. Noland first discusses the potential for \$54,000 in annual retail sales (top left image), then provides an example of covering one's purchase of an Accelerator Pack through recruitment of three new Affiliates who also purchase an Accelerator Pack (top right image). He then proceeds to draw the 10-by-10 downline structure that would maximize the Tier Commissions and BAM Bonuses, assuming that each new Affiliate initiates a monthly order of at least \$100.

Figure 23. Mr. Noland and the Six Phases (Images from 2017-11-07 SBH Commission Plan)



57. After Mr. Noland explains the six phases of the *Commission Plan* and describes the financial rewards that can be obtained through the system, he then invites the viewer to join SBH and strive for these rewards (2017-11-07 SBH Commission Plan):

“All I want to know is, are you coming with us? Are you ready to BAM this thing out? Are you ready to hit these Gen bonuses? Are you ready for this six-tier? Are you ready for accelerator, auto-order bonuses, and retail profit? Because somebody’s going to get it, we want it to be you.”

I will directly address the income and lifestyle representations and assurances made in this video and other SBH materials in Section VII, but it is important to note that these income illustrations rely, almost exclusively, on the ongoing ability to recruit Affiliates who will make payments to SBH.

58. Table 2 shows recruitment and compensation that corresponds to Mr. Noland’s description of the SBH system, which reflects the incentives in the SBH *Commission Plan*. I assume that each Affiliate purchases a \$500 enrollment pack, maintains a \$100 monthly order, recruits 10 additional Affiliates, and teaches those Affiliates to repeat those actions.¹⁴ This example maintains the assumption put forward by Mr. Noland and SBH: that each Affiliate is *able* to recruit 10 new Affiliates. As in the company’s own illustrations, I focus on the primary forms of SBH income: downline Tier Commissions, Accelerator Pack Bonuses, and BAM Bonuses. I then add on retail sales in Table 3. To explain the calculations in Table 2, I provide the following examples:

Month 1: An individual joins SBH as an Affiliate – this person is referred to as the Tier 0 Affiliate. The Tier 0 Affiliate purchases an Accelerator Pack and begins a \$100 monthly order in Month 2. At this time, the Tier 0 has no revenue to offset the \$500 initial payment to SBH.

Month 2: The Tier 0 Affiliate has recruited 10 new Affiliates into Tier 1 who have each purchased a \$500 Accelerator Pack (they will start their \$100 monthly order in month 3). In month 2, the Tier 0 Affiliate earns $\$125*10 = \$1,250$ in Accelerator Pack bonuses. This \$1,250 in income translates to \$1,150 in net profit for the month. Combining this profit with the prior month expenditure of \$500, the Tier 0 Affiliate would hypothetically have a positive cumulative net profit of \$650.

Month 3: 100 new Affiliates are recruited into Tier 2 by the 10 Tier 1 Affiliates (who were Tier 0’s direct recruits). Each Tier 2 recruit purchases a \$500 enrollment pack, but the Tier 0 Affiliate, at least in the original *Commission Plan*, does not earn Accelerator Bonuses on those purchases. In month 3, there are now 10 individuals (not including the Tier 0 Affiliate) who are making a \$100 monthly purchase. The Tier 0 Affiliate earns \$100 in Tier Commissions based on the following calculation: $[\$100 \text{ in Tier 1 Commissions} = 10\% * \$100 * 10 \text{ Affiliates}]$. In addition, the Tier 0 Affiliate earns a \$1,000 BAM Bonus, for a total of \$1,100 in revenue and \$1,650 in cumulative net profit in this theoretical example.

¹⁴ Note that this scenario reflects Figure 13 (right side) for the Accelerator Bonus, Figures 15 and 17 for Tier Commissions, and Figure 20 (left side) and Figure 21 for BAM Bonuses. It also matches the scenario described by Jay Noland in the compensation explanation video (2017-11-07 SBH Commission Plan).

Month 6: 100,000 new Affiliates are recruited into Tier 5 by the 10,000 Tier 4 Affiliates. Each Tier 5 recruit purchases a \$500 enrollment pack, but the Tier 0 Affiliate does not earn Accelerator Bonuses on those purchases. In month 6, there are now 11,110 individuals (not including the Tier 0 Affiliate) who are making a \$100 monthly purchase. The Tier 0 Affiliate earns \$34,700 in Tier Commissions based on the following calculation: $[\$100 \text{ in Tier 1 Commissions} = 10\% * \$100 * 10 \text{ Affiliates}] + [\$600 \text{ in Tier 2 Commissions} = 6\% * \$100 * 100 \text{ Affiliates}] + [\$4,000 \text{ in Tier 3 Commissions} = 4\% * \$100 * 1,000 \text{ Affiliates}] + [\$30,000 \text{ in Tier 4 Commissions} = 3\% * \$100 * 10,000 \text{ Affiliates}]$. In addition, the Tier 0 Affiliate earns a \$1,000,000 BAM Bonus, for a total of \$1,034,700 in revenue and \$1,151,450 in cumulative net profit in this theoretical example.

59. Note that a system which exclusively (or primarily) compensates for recruitment and associated internal purchases is a pyramid scheme, even if it is structured as a binary system where each participant only recruits two additional participants (see *FTC v. Vemma Nutrition Company*, Case 2:15-cv-01578-JJT (D. Ariz.)). With a recruitment factor of 10, the SBH Affiliate organization – if it expands as advertised by the firm and its founder – grows exponentially so quickly that it would exceed the population of the U.S. at the 10th level of recruiting and exceed the population of the world in the following level. By assuming that one can find 10 recruits within one month, losses are contained to those who have just been recruited, but that group quickly constitutes 90% of participants as shown in the last column of Table 2.

60. Loss amounts and loss rates are expected to be even higher if it takes multiple months to achieve the needed recruitment to cover one's personal investment or, more likely, if one never achieves the needed recruitment levels to reach positive profit. For example, loss rates converge to 99% if those in the lowest two levels of the organization are in a loss position (see Appendix C, table C.1). I would expect loss rates in the SBH Affiliate base to exceed 90%, especially as participation grows and recruitment becomes increasingly more difficult. The ability to reach profitability is also challenged by the fact that the Affiliate is not operating in isolation. Other similarly situated recruits are also attempting to build such a downline. Given the design of the SBH system and the incentivized Affiliate behavior, it is possible that some participants will profit, especially with early entry, but only at the expense of other participants.

61. These results are not altered in any meaningful way when retail profits are added to the earnings scenario. Table 3 provides an example which matches the SBH assumptions of retail, namely, that the Affiliate can readily sell personal inventory for a 75% markup (e.g., selling a \$20 box of coffee for \$35). Even under the assumption that the Affiliate can sell 100% of personal inventory at this markup, cumulative net profit for the Tier 0 Affiliate only rises by \$1,318 over the year, representing 0.05% of the overall cumulative net profit in this theoretical scenario. Tier 0 Affiliate compensation is not dependent on the final "use" of the product purchased by downline Affiliates (e.g., retailed to an external customer, personally consumed by the downline Affiliate, used for samples in prospecting, stored and not consumed). Tier 0 Affiliate compensation is only connected to the ultimate use of the products he/she purchases from SBH, and that connection is trivial relative to other rewards and incentives.

Table 2: SBH Compensation Scenario and Downline Structure – With No Retail Sales

Month	Tier 0 Affiliate and His/Her Theoretical Outcomes Over One Year									Minimum Number (%) of Tier 0 Affiliate's Downline in a Loss Position
	Tier 0 Affiliate's New Downline Members	Tier 0 Affiliate's Cumulative Downline	Tier 0 Affiliate's Downline Tier Commissions	Tier 0 Affiliate's Accelerator and BAM Bonuses	Tier 0 Affiliate's Offline Retail Profit	Tier 0 Affiliate's Personal Purchase	Tier 0 Affiliate's Net Profit in Pay Period	Tier 0 Affiliate's Cumulative Net Profit		
1	-	-	\$0	\$0	\$0	\$500	-\$500	-\$500		
2	10	10	\$0	\$1,250	\$0	\$100	\$1,150	\$650		10 (100%)
3	100	110	\$100	\$1,000	\$0	\$100	\$1,000	\$1,650		100 (91%)
4	1,000	1,110	\$700	\$10,000	\$0	\$100	\$10,600	\$12,250		1,000 (90%)
5	10,000	11,110	\$4,700	\$100,000	\$0	\$100	\$104,600	\$116,850		10,000 (90%)
6	100,000	111,110	\$34,700	\$1,000,000	\$0	\$100	\$1,034,600	\$1,151,450		100,000 (90%)
7	1,000,000	1,111,110	\$234,700	\$0	\$0	\$100	\$234,600	\$1,386,050		1,000,000 (90%)
8	10,000,000	11,111,110	\$234,700	\$0	\$0	\$100	\$234,600	\$1,620,650		10,000,000 (90%)
9	100,000,000	111,111,110	\$234,700	\$0	\$0	\$100	\$234,600	\$1,855,250		100,000,000 (90%)
10	1,000,000,000	1,111,111,110	\$234,700	\$0	\$0	\$100	\$234,600	\$2,089,850		1,000,000,000 (90%)
11	10,000,000,000	11,111,111,110	\$234,700	\$0	\$0	\$100	\$234,600	\$2,324,450		10,000,000,000 (90%)
12	100,000,000,000	111,111,111,110	\$234,700	\$0	\$0	\$100	\$234,600	\$2,559,050		100,000,000,000 (90%)

Assumptions:

- An individual (Tier 0 Affiliate) joins SBH in Month 1 and brings in ten frontline (direct) recruits in the subsequent month.
- Each new Affiliate recruits ten frontline recruits in the month following the join month and does not recruit any additional frontline recruits. Note that this assumes that this recruitment level is possible for each and every SBH Affiliate.
- Each Affiliate purchases a \$500 Accelerator Pack and maintains \$100 in product purchases each month.
- No expenses are included beyond product purchases.
- Bonuses and Commissions are paid in period of qualification.
- Bonuses represented include Accelerator Pack Bonuses, Tier Commissions and BAM Bonuses. No retail sales, product credit, Generation Infinity Bonuses, trip incentives, sales taxes, or shipping and handling are included. Tier Commissions do not include any commissions paid on the personal purchases made by the Tier 0 Affiliate.

Table 3: SBH Compensation Scenario and Downline Structure – With 100% Retail Sales (i.e., all of product purchased in the prior month is sold at a 75% markup to retail customers)

Month	Tier 0 Affiliate and His/Her Theoretical Outcomes Over One Year									Minimum Number (%) of Tier 0 Affiliate's Downline in a Loss Position
	Tier 0 Affiliate's New Downline Members	Tier 0 Affiliate's Cumulative Downline	Tier 0 Affiliate's Downline Tier Commissions	Tier 0 Affiliate's Accelerator and BAM Bonuses	Tier 0 Affiliate's Offline Retail Profit	Tier 0 Affiliate's Personal Purchase	Tier 0 Affiliate's Net Profit in Pay Period	Tier 0 Affiliate's Cumulative Net Profit		
1	-	-	\$0	\$0	\$0	\$500	-\$500	-\$500		
2	10	10	\$0	\$1,250	\$438	\$100	\$1,588	\$1,088		10 (100%)
3	100	110	\$100	\$1,000	\$88	\$100	\$1,088	\$2,176		100 (91%)
4	1,000	1,110	\$700	\$10,000	\$88	\$100	\$10,688	\$12,864		1,000 (90%)
5	10,000	11,110	\$4,700	\$100,000	\$88	\$100	\$104,688	\$117,552		10,000 (90%)
6	100,000	111,110	\$34,700	\$1,000,000	\$88	\$100	\$1,034,688	\$1,152,240		100,000 (90%)
7	1,000,000	1,111,110	\$234,700	\$0	\$88	\$100	\$234,688	\$1,386,928		1,000,000 (90%)
8	10,000,000	11,111,110	\$234,700	\$0	\$88	\$100	\$234,688	\$1,621,616		10,000,000 (90%)
9	100,000,000	111,111,110	\$234,700	\$0	\$88	\$100	\$234,688	\$1,856,304		100,000,000 (90%)
10	1,000,000,000	1,111,111,110	\$234,700	\$0	\$88	\$100	\$234,688	\$2,090,992		1,000,000,000 (90%)
11	10,000,000,000	11,111,111,110	\$234,700	\$0	\$88	\$100	\$234,688	\$2,325,680		10,000,000,000 (90%)
12	100,000,000,000	111,111,111,110	\$234,700	\$0	\$88	\$100	\$234,688	\$2,560,368		100,000,000,000 (90%)

Assumptions:

- An individual (Tier 0 Affiliate) joins SBH in Month 1 and brings in ten frontline (direct) recruits in the subsequent month.
- Each new Affiliate recruits ten frontline recruits in the month following the join month and does not recruit any additional frontline recruits. Note that this assumes that this recruitment level is possible for each and every SBH Affiliate.
- Each Affiliate purchases a \$500 Accelerator Pack and maintains \$100 in product purchases each month.
- No expenses are included beyond product purchases.
- Bonuses and Commissions are paid in period of qualification.
- Financial rewards represented include Accelerator Pack Bonuses, Tier Commissions, BAM Bonuses and offline retail sales profit. No online retail sales, product credit, Generation Infinity Bonuses, trip incentives, sales taxes, or shipping and handling are included. Tier Commissions do not include any commissions paid on the personal purchases made by the Tier 0 Affiliate.
- 100% of product, purchased in the prior period, is sold in hand-to-hand transactions with retail customers. Product is sold at a 75% markup, similar to the example of selling a \$20 box of coffee for \$35.

62. If the Affiliate attempts to retail more product, by purchasing more inventory and attempting to sell it at a markup, the Affiliate would be taking this risk in pursuit of a small reward relative to the commissions and bonuses that can be earned through recruitment of additional Affiliates. Furthermore, a rational, cost-minimizing retail customer would be incentivized to purchase product directly through the Affiliate's SBH website (or the company's website) to access the SBH wholesale price, resulting in a 10% commission (or 0% commission if through the company's website) on the retail sale rather than the 75% return suggested in SBH materials. As discussed in Section VI, training materials further undermine the minimal retail incentives in the SBH *Commission Plan* by training Affiliates to convert the retail customer to a new Affiliate and by encouraging the Affiliate to purchase product for personal consumption and sampling (i.e., buying product from SBH and providing free samples to consumers to entice them to make a purchase).

63. Beyond the limited incentives to retail and the training that actively discourages such retail (discussed in Section VI, *infra*), the projected numbers of retail customers are unsubstantiated and fanciful. As shown in Table 4, if a single Affiliate executed the plan as shown in the SBH illustrations – recruiting 10 Affiliates and 100 monthly customers, and getting others to do the same – this single Affiliate would build a downline organization (including customers) that grows to over one billion individuals by the 8th month, and over 11 billion individuals by the 9th month. Note that other SBH Affiliates would be simultaneously trying to build the same structure. Again, the mathematical realities of this exponential growth undercut profitability for all but a small share of SBH participants. This is the very reason why such structures are inherently deceptive.

Table 4. Hypothetical Retail Customers in the Power of Ten Structure

Month	Tier 0 Affiliate's New Downline Members	Tier 0 Affiliate's Cumulative Downline	Number of Retail Customers when each Affiliate has 100 Customers	Total Number of Affiliates and Customers (in the Tier 0 Affiliate organization)
1	-	-	100	100
2	10	10	1,100	1,110
3	100	110	11,100	11,210
4	1,000	1,110	111,100	112,210
5	10,000	11,110	1,111,100	1,122,210
6	100,000	111,110	11,111,100	11,222,210
7	1,000,000	1,111,110	111,111,100	112,222,210
8	10,000,000	11,111,110	1,111,111,100	1,122,222,210
9	100,000,000	111,111,110	11,111,111,100	11,222,222,210
10	1,000,000,000	1,111,111,110	111,111,111,100	112,222,222,210
11	10,000,000,000	111,111,111,110	1,111,111,111,100	1,122,222,222,210
12	100,000,000,000	111,111,111,110	11,111,111,111,100	11,222,222,222,210

64. The changes in *Commission Plan 2.0* do not alter my conclusions in any way. What follows are a series of statements, made by Jay Noland, in the SBH Heat Call (2019-08-01 SBH Heat Call). These statements describe the similarities between the original *Commission Plan* and the new one. If anything, these statements further confirm the centrality of

ongoing Affiliate recruitment and the strong incentives for internal purchases, including the purchase of enrollment packs and monthly auto-orders by Affiliates. Mr. Noland begins by speaking about similarity between the original *Commission Plan* and *Commission Plan 2.0*.

“Nothing has changed, we’ve added things to the plan, so we’ve added money.”

“Everything is still the same...same volume, none of the monthly volume requirements have changed, is just that we want you now focusing on doing it every week, and if you do that every week you leave no bonuses on the table.”

[Of the original six ways to earn] “Those are things that were always, that were already there, that are still there.”

65. Mr. Noland then moves to a discussion of the Accelerator Bonus, saying: “we had it to where you got paid any time you sold a pack,” “you sell the pack, you get paid” creating “rocket fuel.” He proceeds to discuss the changes in this bonus in *Commission Plan 2.0*.

“Now any time a business pack is sold, up to four people now are going to get paid on that one business pack that was sold. So instead of one person getting paid, the person who sold it, we’re going to create some great residual income opportunity through people selling these packs or getting people started in the business.”

Mr. Noland notes that the Starter Pack is now also part of the Accelerator Bonus.

66. After discussing enrollment pack bonuses, Mr. Noland then turns to discussing the Tier Commissions, saying: “In order to get rewarded on more tiers, you need to move on up in the plan” and you need to “encourage people to move up through the plan.” He then discusses the Power of Ten:

“What if you have 10? You know our Power of Ten? Everybody’s out there showing the business and then you have 10 people, that are all just moving one, ah, pack each during the course of the month, look at this jump here. Now you are making an extra \$1300, plus your \$415 from you, and if you add those 10 got 10, that would be an extra \$7,000. And then the 10’s 10 got 10, that would be an extra \$40,000... in this simple theoretical example, showing you how this pay-plan works. Now again, there’s no guarantees of income with our plan. If you don’t do anything and your team don’t do anything, you don’t make any money. But if you do, this is an example of showing you how it works.”

67. Mr. Noland then discusses a new form of compensation – the Power 500 and Power 1000 Bonuses – that further incentivize enrollment pack purchase and Affiliate auto-orders:

“So, first 14 days from the time a person buys a pack, they can earn a \$500 bonus as long as they are a minimum pack qualified with the product starter pack. The number one requirement: a person needs to purchase at least a product starter pack, that 125 pack or higher, that’s the first thing. Now, they need to have two people ... that they personally referred ... that have purchased any of the business packs as well. They need to have two people on a 100 QV auto-order, and it can be the same two people. So make sure you understand that, and from their Tier 1, that means anybody that you personally refer, their volume has to equal, their QV has to equal \$1,000 within that 14

days. Alright? So simple theoretical, simple theoretical example. Person gets started today. They buy a product starter pack. They go out and refer two people personal that buy an Accelerator Pack. One gets an Accelerator Pack, another gets an Accelerator Pack. Each Accelerator Pack carries 500 QV, alright? So now I've met my QV requirement of \$1,000. I get each of those people that got the Accelerator Pack, I get them to set up a 100 QV auto-order. If they do that, bam! I've earned \$500. What's that going to do for your team? That's going to give you the ability to encourage people purchasing packs, number one. Number two, people getting on auto-order to help stabilize your volume and create consistent commissions and create speed, and more importantly, get money in your new people's hands – a substantial amount – right away."

"To get a \$1,000 bonus, you have to purchase or upgrade to an Accelerator Pack or higher. You have got to four personals that bought any pack, and you've got to have four personals that, ah, are on 100 QV auto-order setup."

"So to get a person a \$1,000 bonus, they've got to just do some simple work within their first 14 days and they are off and running."

68. Mr. Noland then describes a new matching bonus, which pays a 5 to 20 percent match on the Tier Commissions earned by personally referred Affiliates, explaining that to move up in the percent match "you've got to have more personals that bought a biz pack at any time and that did a 100 QV auto-order." In terms of the BAM Bonus, Mr. Noland states that they are identical to the prior version:

"You can earn between a million, you can go from a million to five million just through getting those 10 by 10 by 10s, and getting them all doing 100 or 500, you earn all the way up: 1,000, 10,000, 100,000, a million and then 5,000, 50,000, 500,000 ... and 5 million on those bonuses."

Mr. Noland concludes with the assurance that these results are attainable:

"If you just go to work, you've got it."

"The money opportunity to make and change your life is ridiculous. All you have to do is go to work."

69. Beyond the *Commission Plan* incentives, SBH materials¹⁵ discuss an SBH Founders Club. This club offers rewards that are outside of the public SBH *Commission Plan*, including access to a percentage of the firm's revenue, rights to a "retirement pool," event tickets and other perks. Founders must commit to a high-priced enrollment pack, a monthly auto-order, and other expenditures to remain in the club. Jay Noland explains the commitment as follows (2019-04-04 174518955175763-001):

"With a Founder, here's how it works. It's a package, so you're not just buying a position, you're buying product, so you're buying a product pack that comes with loads of additional benefits and prestige, that's a big one, cause you'll be able to say 'I'm a U.S.

¹⁵ These materials include include 2019-05-28 Only 3 Days Left_End of SBH Volume Month, 2019-04-04 Founders Pack Relaunch, 2019-07-02 Existing Founders Pack Relaunch Application, 2019-07-02 Founders Pack Relaunch Application, and 2019-04-04 174518955175763-001.

Founder and we will acknowledge you and recognize you as such. So the pack itself is \$2,995. It comes with three thousand, over three thousand two hundred dollars in product."

"Each SBH USA Founder must ... you must maintain a 100 QV auto-order, alright. So instead of just having a \$100 order, you, this now has to be an auto-order. Stepping that up in commitment to make sure that we give you great habits."

70. Founders must also commit to attending every event and maintaining the monthly auto-order. If they do, Mr. Noland suggests that the rewards will be life-changing (2019-04-04 174518955175763-001):

"You can't miss any month of 100, you can't miss it, no matter what, you cannot miss a month, and if you did miss that month [in the past], you have to make it up" and "you have to be in Dallas this weekend."

"Now we're getting ready to explode, so now that we are in a position to explode we want the right people in there, getting the opportunity to reap the right rewards."

"Really and truly, what's the real payout here? It's getting in the retirement pool. You're talking about hundreds of thousands, and eventually millions of dollars that can be made, potentially, if somebody makes it there. Not everybody's going to make it to the retirement pool. But for the ones that do, the payout on it is like, you can't even keep it in this world. Let's just say over a ten-year period, you made a million dollars extra, or two million dollars extra. It might even be three or four million dollars extra. Who knows, nobody knows for sure what it will be. But all you had to do was what you're supposed to do anyway and buy a little bit of extra products, and go retail them, and get a bunch of free stuff with it."

"What else are you going to do to get wealthy?"

71. The SBH Founders Club provides a clear picture of the direct connection between Affiliate purchases – at the time of entry and on an ongoing monthly basis – and financial rewards in SBH. The Founders Club and *Commission Plan 2.0* are discussed in a 2019 video (SBH Power2 and VOZ Travel Training), where this video also introduces a new Power2 Bonus and promotes the future introduction of travel-related products and associated enrollment and Founder packs. The new Power2 Bonus is based on a parallel structure to the 10-by-10 recruitment tree, which organizes the recruits into a binary structure with two "legs." Figure 24 shows the relationship between the original "Personal Referral Team" and the "Power2 Team." The Power2 bonus rewards Affiliates for recruiting new Affiliates who purchase an enrollment pack. As described by Mr. Noland and shown in Figure 25: "What volume is powering the Power 2? Only volume from business packs."

Figure 24. Power2 Team Structure (image from SBH Power2 and VOZ Travel Training)

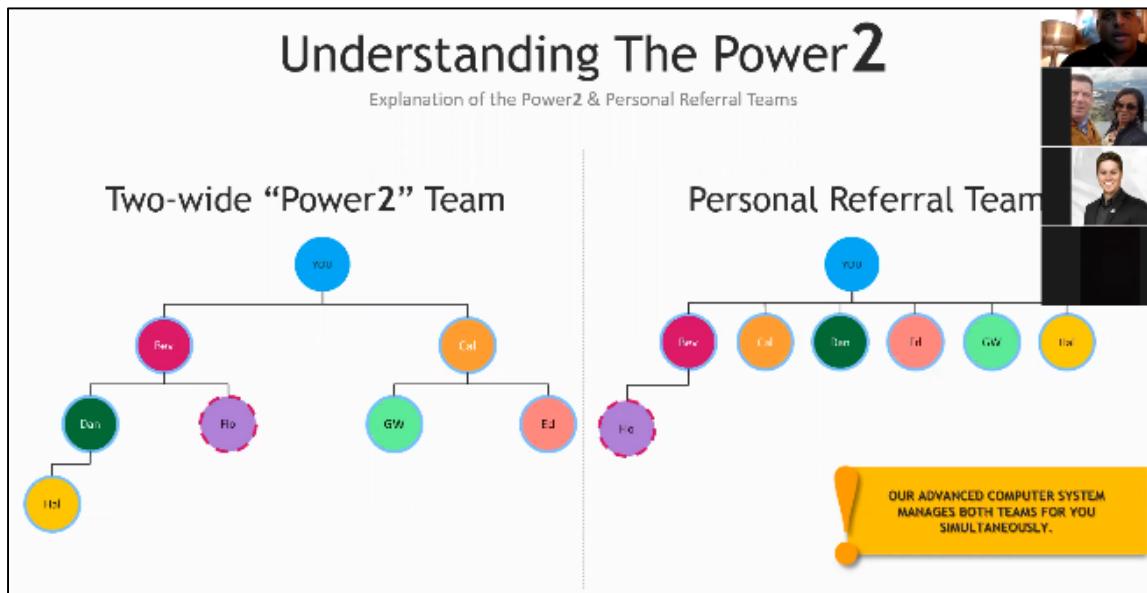


Figure 25. Power2 and Enrollment “Biz” Packs (image from SBH Power2 and VOZ Travel Training)



72. Mr. Noland explicitly describes the connection between Power2 earnings and Affiliate recruitment (SBH Power2 and VOZ Travel Training):

"What makes this so powerful is the fact of this that, in order to get paid in the Power 2, you've got to go recruit. See? We do two things: we sell product and we recruit other people to sell products. So if you're just focused on just selling products and not

recruiting other people to sell products, you're not getting other people's efforts involved in helping you build more residual income."

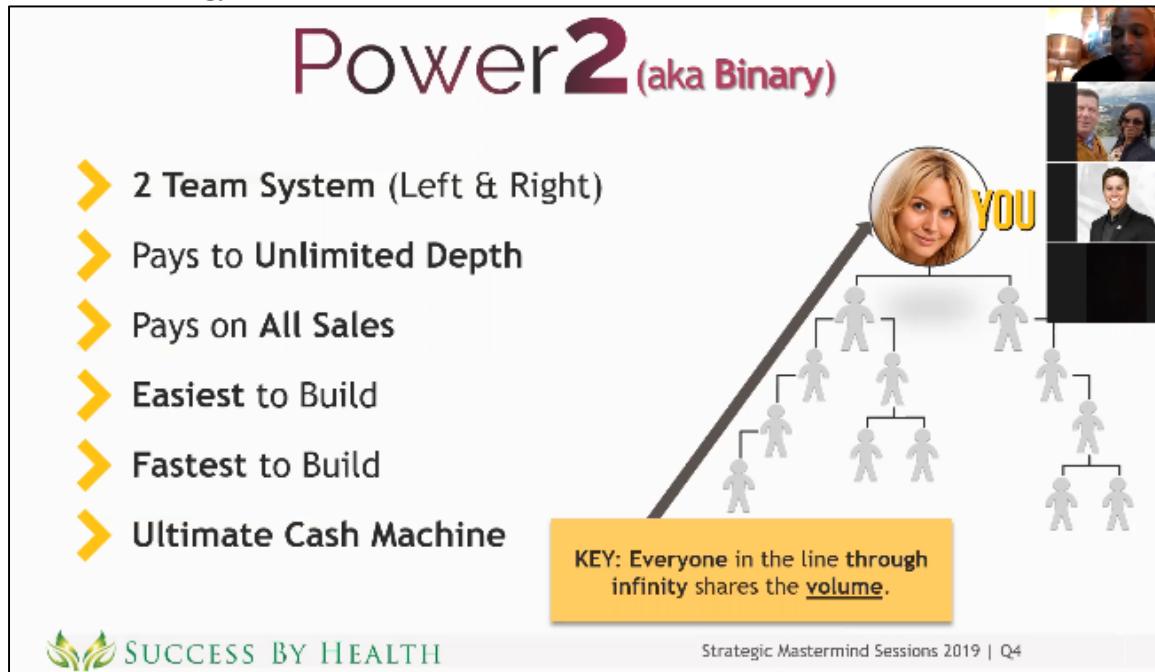
[This bonus] "makes people recruit in order to capture pay in the Power 2 ... making people get residual income, making people get free."

Mr. Noland also notes that this bonus requires Affiliate purchases:

"With our company you don't have to make purchases as Affiliates but you do in our Power2, but not as a standard Affiliate to make money."

As shown in Figure 26, the Power2 bonus is said to be "an unlimited cash machine because it goes down through infinity." Additional income claims related to the Power2 bonus will be included in Section VII. Together, the changes made in *Commission Plan 2.0*, the Founders Club and the Power2 bonus show that, if anything, SBH is increasing the incentives for Affiliate recruitment and internal purchases over time.

Figure 26. Power2 Bonus as "Ultimate Cash Machine" (image from SBH Power2 and VOZ Travel Training)



73. In sum, the SBH incentive structure promotes ongoing recruitment of Affiliates and internal purchases, creating an endless recruitment chain that is expected to leave the vast majority of participants in a loss position, by design. The models in this Section illustrate that the structure of the program itself predictably leads to poor results for the vast majority of participants, regardless of accidental or external factors. While many new businesses fail because of adverse business conditions, poor management, bad luck, or any number of other reasons, with this type of program, failure for most participants is inherent in the system. These models provide a useful economic context to explain why courts have condemned pyramid schemes. In the next Section, I will discuss the ways in

which SBH Affiliates are trained to operationalize this compensation structure. I find that the SBH training materials and prescribed behaviors align with the SBH *Commission Plan* incentives.

VI. SBH Affiliate Training

74. SBH Affiliate training is provided in multiple forms, including written documents, in-person training presentations, pre-recorded videos, live presentations streamed over the internet, and paid training events. One of the primary sources of training is the SBH Fast Start System document. The messages and directives in the Fast Start System exemplify the content in all SBH training materials. In that sense, the Fast Start System is not unique, and this Section includes content from other training documents and videos as well. As described in Section IV, the Fast Start System includes documents and audio files designed for the new SBH Affiliate (2019-01-24 SBH_FastStartSystem_v20190115). The Affiliate is told to rely on the simple, systematic Fast Start System and teach their recruits to do the same:

“The SBH Fast Start System is a very simple and systematic system of success for SBH Affiliates.”

“Our step by step system can be followed by anyone. It is important though that you follow each step in the order they are listed and make sure ALL your TEAM does the same.”

This system is centered on Affiliate purchases, ongoing Affiliate recruitment, and training for duplication, with some limited attention to retail sales. These focal points mirror the SBH compensation structure (*discussed supra*). I discuss each of these elements in turn.

VI.1 Incentivized Affiliate Purchases

75. One of the primary messages in SBH training is the importance of Affiliate purchases. Affiliate purchases include the initial enrollment pack and ongoing purchases (e.g., monthly product auto-orders and paid training events). I begin with the training associated with enrollment packs. As shown in Figure 8 (*supra*), the recruit is first asked to choose the type of person they wish to be (i.e., Type 1-Supplement Income; Type 2-Replace Job; or Type 3-Financial Freedom) and to choose the enrollment pack that best matches that type. In an audio link embedded in the Fast Start System, Mr. Noland first explains the “business building” choices:

“I want to take some time to really help you understand what you need to do to properly get started with SBH and to properly get committed with your business here with SBH. The first thing you want to do is decide on how you want to build the business. Do you want to just, simply #1 supplement your income, or #2 replace your income and have no more job, or #3, do you want financial freedom. That’s important for you to make that decision right now. Each one of those steps requires a different level of commitment. The higher the reward, the higher the commitment.”

"If you just want to supplement your income, well, that's not a ton of commitment here with our company. You could just simply get involved with the business, get your few products, begin to expose your website that we give you, start talking to other people about the product and just kind of sell products as you go, here and there. If you want to replace your income, well you're going to have to get more focused here. You're going to have to get more committed with where you are getting started and then we've got a simple six month plan to help get you out of that job, based on you following our steps and being committed to those steps. If you want financial freedom we have an 18 month plan. It's very detailed and it really requires a high level of commitment because there's things you'll have to do on a day-to-day basis."

76. Mr. Noland then explicitly connects the size of the enrollment pack to the level of commitment and the magnitude of financial rewards in SBH:

"Now you want to purchase the business pack that matches how you want to build your business. Again, the higher pack you start with the more initial commission plan benefit you're going to get from the company and, again, you're going to need products because these products, you're going to need them to use, to personally use, to sample to other people. There's nothing more powerful than a sample as far as a marketing tool, and you're going to need to have product to sell to make retail profit. Each of these three things help you develop more SBH customers and new SBH Affiliates, and to do it faster. The more inventory you have on hand to start your business, the faster your business will typically grow as you implement this training."

77. In the Fast Start System, the new recruit is reminded that the \$49 Affiliate membership, described as "option A," includes no SBH products. Of the \$125 pack (i.e., "option B"), the recruit is told "if you just want to supplement your income, that's a good place to get started." Greater benefits are ascribed to the \$500 pack:

"Now, let's talk about getting out of that job. Let's talk about getting financially free. Let's move on to option C, which is our Accelerator Pack. It's \$500."

"So \$500 Accelerator Pack, we typically say, look, if you're looking to replace your income, get out of that job, that's a good place to start. It's up to you but we suggest that's a good place to start."

The \$1,995 option – the Super Accelerator Pack – is said to provide:

"the best possible chance of taking advantage of the commission plan benefits, and on top of that, having a good variety of products to use, to sample, to sell, and on top of that, being able to say to people, 'Here's where I started, I started with the fullest commitment.'"

"If you're looking for financial freedom, a good place to start would be with that Option D, the Super Accelerator Pack, but that's up to you."

78. The same message is presented by Mr. Noland in the SBH CEO's Company Vision Message on the SBH website (2018-04-09 SBH CEO's Company Vision Message), the SBH Business Overview (2018-05-05 SBH Business Overview B-2), and the SBH Group Presentation Script (2019-01-28 9_SBHGroupPresentationScriptCTM). As described in the Group Presentation Script: "The higher the Pack you initially start with, the more money

you can make for doing the same thing." Figure 27 provides an excerpt from the Group Presentation Script, where the size of the enrollment pack is explicitly connected to the recruit's commitment and goals. Someone who simply wants supplemental income is told to choose the \$49 membership or \$125 Sample Pack, someone who wants "No More Job" should purchase the Accelerator or Super Accelerator Pack, and someone who wants "Financial Freedom" should take "Massive Action" and start with the Super Accelerator Pack. The recruit is encouraged to "Do you best to push yourself."

Figure 27. Advice on Enrollment Packs (2019-01-28 9_SBHGroupPresentationScriptCTM)

At this point there are typically 3 different types of people who come to our presentations.

1. Someone who wants to Use the Products, Supplement Their Income and gain Great Tax Benefits

*Sign up as an Affiliate for \$49 and get a few products or get the \$125 Sample Pack.

2. Someone who wants to Replace Their Income (No More Job)

*This person realizes that they can't financially survive on what they are currently making, nor do they want to continue to work for someone else.

*Wants to replace current income in the next 6 months or so.

*Pick a Pack and let's go to work. Best to start with an Accelerator Pack or Super Accelerator Pack.

3. Ready for Financial Freedom (Get Started Now. Take Massive Action)

*This person wants to be live the Life of Their Dreams. They don't want to settle for average.

*Wants to duplicate efforts to have Financial Freedom (Residual Income).

*Will relentlessly work our 18 Month Plan and learn to become Successful.

*Pick a Pack and let's go to work. Best to start out with a Super Accelerator Pack If possible. (Do your best to push yourself)

The key is to at least Get Started somewhere. We've got plans for each of these 3 types of people. Simply pick your path and plug into our system. At SBH, we literally show people exactly what to do. There is no guessing.

79. In a live training and recruitment session (2019-04-15 SBH Live Group Presentation with CEO Jay Noland), Mr. Noland explains that a higher-priced enrollment pack provides inventory for sharing and selling and opens up qualification for higher Tier Commissions (as discussed in Section V):

[\$49] "That's if you just want to be an Affiliate. So what's gonna happen, I gave you an example of six tiers. When that thing gets to down fifth and sixth tier, that's when that money really raises up. So when you become an Affiliate, you don't have to buy anything else. You've just got to talk if you want to. We'll pay you four of those tiers. So you'll get four for \$49, if you talk. We'll give you a website, a back office, and every year we'll just charge you 49 bucks, just like a Cosco membership."

"So if you want to come in at \$49 that's okay. But then you might want to come in and get some products in your hand so that when somebody goes 'Yeah, I want some' you make that money right then. Does that make sense? So you can make at least 50%."

"So you might want to have some to sell. So some people start with a Business Pack. See, I suggest that if you really want to get this thing rolling, and get on down the road to freedom, you get started with one of our Business Packs."

80. Mr. Noland then explains the additional benefits of upgrading from the \$125 pack:

"\$125 pack, you get a little bit of product, but you're still at four tiers. Some of y'all say I want to get additional tiers quicker, so you'll come in with an Accelerator Pack, it's only \$500. So you spend \$500 and, guess what's going to happen? You're going to have some products. You can turn that \$500, and we're going to give you \$600 in products by the way, if you just made 50%, your \$500 is going to turn into \$900. Is that smart money? So some people say 'Get me going like that and let me pick up five tiers.' Some people say 'How do I get six tiers out of the gate?' That's our Super Accelerator Pack, \$1,995. Now you're going to get all kind of benefits. We'll give you \$200 in free product, so now you've got \$2,200 that if you just went and sold it, you're going to have how much come in? Even at 50%. You're going to make over a \$1,000 right there. Just going out and exchanging something that people are already buying. Plus we're going to give you tickets, we're going to give you free training. All kinds of stuff is going to come with that. So people ask me all the time, 'Jay, just tell me what I should do.' I say the first thing you gotta do is quit being afraid. You've got to stop being afraid. You've got to start listening to yourself. You know when something feels right, and a couple thousand dollars for a business, what's that really? Like if you start a traditional business, you all know what it would cost you to start a traditional business? It's about 250 grand after you do all the things. Even the small ones, they're going to spend a couple hundred thousand."

"After 23 years of me doing this, number one problem. People don't take this seriously. Number one. But everybody I know, personally, they got started. They said 'Look, what's the biggest pack I can get cause it ain't going to scratch a traditional business.' So they would go, 'Ok, I'm going to get me \$1,995."

81. Within the Fast Start System audio materials, Mr. Noland encourages the new recruit to use credit to finance the enrollment pack purchase (2019-01-24 SBH_FastStartSystem_v20190115):

"Don't let your circumstance keep you where you're at."

"If you can't afford it, you can't afford not to."

"That's even more of a reason to take advantage of the success principle called 'Other People's Money' so utilize a credit card or someone else that has a credit card and leverage that money to get yourself into a position where you can remove the words, 'I can't afford it' and get them off of your lips, forever."

"I did that, from my credit card, my mom's, other people's, turned into multi billions of dollars in revenue."

82. In the live presentation (2019-04-15 SBH Live Group Presentation with CEO Jay Noland), Mr. Noland further establishes the case for funding the higher-priced enrollment pack with a credit card, again referring to credit as "other people's money:"

"What I'm going to do is put it on a credit card. I'm going to use other people's money. I'm going to do what's been happening to me all these years, people using my money. How many of you all got a credit card? Whose money is that, yours or other people's? And they are going to charge you, what on it? They're going to charge you interest on that, think about what's going on. They're going to charge you interest so they're using you. You can flip the script on them. You now take the money that they're charging you interest on, and you leverage it. Right, you get your Super Accelerator Pack, your payment's only going up about 60 bucks, the average, the minimum payment goes up about 3%, on average. So now you take 2,000, your payment goes up 60 dollars extra, you sell two of these bags, you make your payment. Right?"

"We have a system to help you move all of that product in two weeks."

"When somebody works with me, If I'm working with somebody direct, I say you're going to get a Super Accelerator Pack. Here goes a script. I'm going to walk right with you and we're going to move this product in two weeks and get you into profit, get you hooked on profits."

83. In the live presentation, Mr. Noland describes the enrollment pack purchase as the first of the "Four Steps to Success," referenced in Section IV and shown in Figure 9 (*supra*) and Figure 28 (*infra*):

"So you got to get in. Everybody say 'I gotta get in.' So once you get in we're going to take you through four steps. You get in, first. Number two, be a product of the product, use the product. Three, you start building a team, just make a list, we're going to show you how to build a team. Four, pay attention to the training. We're going to show you exactly what to do."

Figure 28. Four Steps to Success (2019-01-02 13_SBHWeeklyGettingStartedTraining)



84. In terms of month-to-month personal product use (i.e., Step 2) and sampling (i.e. sharing SBH products with prospects), the Fast Start System states the following (2019-01-24 SBH_FastStartSystem_v20190115):

“Now make sure that you are using some or all of the SBH products so that you begin to become a walking testimonial of the power of the SBH products.”

“Facts tell, stories sell.”

“Now at the same time, what you are going to need to do is start handing out samples to other people. These products are really your best marketing tool. The goal is to hand out at least 30 samples within your first two weeks in the business.”

85. These ongoing purchases are ideally made within an auto-order commitment, which is described in the Fast Start System as way to ensure consistency for use, free sampling to others, and compensation:

“Auto-Order is not mandatory but helps make sure you reduce or meet certain qualifications in the SBH Commission Plan.”

“These are for the people that are most committed in the business. So if you’re looking to, you know, replace your income, get rid of a job, or you want financial freedom, you don’t have to be on auto-order but we highly recommend it.”

“With our company, we don’t have any minimum PV or personal volume requirements, so there’s no minimum purchase requirements, in order to get commissions with our company, but what happens is as you set up an auto-order, and as you start to set up your own personal volume, each part of your personal volume purchases counts toward your rank qualifications so that’s a great way for you to rank advance is through your own personal purchases.”

86. The Fast Start System prompts the Affiliate to read and utilize the “Power of an AutoOrder Program” document, which explains the specific reasons that they should personally commit to a monthly purchase and train and encourage their recruits to do the same. The following are statements in that document (2019-01-28 2_PowerOfAnAutoOrderProgram) which emphasize the importance of revenue stability, personal product use, and setting an example for your downline:

“Why an Auto-Order?

The purchase of a SBH’s products creates the revenue stream that supports and enables all of the Company’s activities; from manufacturing, marketing, distribution, to paying salaries and commissions. For any company to succeed it is necessary for sales to grow consistently. The SBH Auto-Order Program is an important part of that sales growth and can be your commitment of consistency to our Company and your team’s growth. SBH Affiliates using an Auto-Order to purchase their products regularly are feeling the effects of the products daily. By using the products on a regular basis, individual enthusiasm grows as SBH Affiliates truly become a “product of the product” and develop their own testimonials.”

“Consistency is essential to successfully building your business and your sales organization. Even on a part-time basis, consistency is a central and key factor in achieving success

with any business. A great leader leads by example. Many of the people in your sales organization will follow your lead."

"Some of the people you refer will ask your advice and opinion of our Auto-Order Program, so it stands to reason that you must be using the SBH Auto-Order Program before you can advise them in good faith to make that commitment."

"In our Commission Plan all volume generated by your sales organization accumulates and is one of the basis for your commissions. It makes sense then that as your sales organization grows, you want the sales volume to grow and increase every month. By making sure that the people in your sales organization purchase our Company's products consistently, your sales growth is assured. This is the power of the SBH Auto-Order Program."

87. The "Power of an AutoOrder Program" document then establishes a direct connection between auto-orders and Affiliate success, referencing a larger study regarding auto-order purchases in the direct selling industry:

"Typically, most successful Affiliates in Direct Sales are on their company's Auto-Order Program. The most successful people in the Company use the products regularly. Also, usually the most successful people in our Company emphasize the importance of the Auto-Order Program to the people that they refer to help assure their success."

"SBH Referrers who succeed in their business do so because they have more people buying and using the company's products monthly. The people they refer succeed because they experience the effects and results of our Company's products. We want our Affiliates to become 'products of the products.' This creates more excitement and more motivated Affiliates in your organization."

"You could say based on this study that:

- 1) If you go on our Auto-Order program when you sign up, then you'll have approximately an 85% chance of earning regular commission checks within 2 years;
- 2) If you sign up people in your sales organization on our Auto-Order Program, then approximately 92% of them will stay with you for at least 2 years, and approximately 85% of them will also earn regular commissions,...
...on the other side...
- 3) If you don't sign up on our Auto-Order Program then you have approximately a 96% chance of quitting within 2 years and, therefore, not earning commissions."

"Some use these statistics as part of their prospecting and referring strategies. In their reasoning with prospects they say something like this:

'I can sign you up and get you on our Auto-Order Program and give you approximately a 92% chance to succeed within 2 years, or I can sign you up without getting on our Auto-Order Program and give you approximately a 96% chance to fail within 2 years. It's your choice."

"As you can see an Auto-Order Program can be absolutely critical for your success. The studies show that without it, you are only hoping for Residual Income."

88. In the SBH Prospecting System instructions (2019-01-28 6a_SBHProspectingSystemCoffee), the Affiliate is provided specific instructions for working with a potential recruit. With respect to auto-order purchases, the Affiliate is told to do the following:

“Explain Power of the Auto-Order Program: Set appropriate Auto-Order”

“Ask: Do you think working this together we can help you make at least \$60 within your first 30 days? Statistics show people on Auto-Order have a better opportunity for success.”

89. Beyond enrollment packs and monthly product purchases, training messages also speak to the importance of attending SBH training events. Tickets can cost hundreds or thousands of dollars for a single event and require travel, lodging and time away from work or other commitments. In a live training event (2019-04-15 SBH Live Group Presentation with CEO Jay Noland), Mr. Noland references the opportunities for additional training and the wealth that they will generate if attendees simply follow his lead:

“You can get in, and then you can come right back tomorrow to get trained. Now tomorrow I’m going to jump you four years ahead in the business.”

[I will show you] “why I think the way I think that gets me what I got. I don’t have to work ever again. So the words that are coming out of my mouth are freedom words. I want to teach you how to put these words in your mouth.”

“That has got to be the realest thing that you ever have dealt with when it comes to business. Having somebody that’s generated billions of dollars walk in and go, ‘I’m going to show you how to do it.’ All you got to do is pay attention. All you got to do is get in.”

90. The training opportunity referenced in the live presentation required a \$195 ticket to attend. This is one of many such training opportunities that require an additional payment by SBH Affiliates. Additional videos (2018-08-08 Success By Health - 4th of July Bash, 2019-05-04 SBH H3 Maui 2018 Dream Video, 2018-08-11 2018 SBH Wealth Warriors Boot Camp Highlights!) promote the power of attending such events. In one such promotional video (2019-03-14 RED - STRAIGHT TALK - NO JOKE) with screenshots shown in Figure 29, Mr. Noland describes the financial benefits of attending a \$795 training:

“Getting control and honing in on your red, and get down to really making money. You know I’ve trained some of the top active money earners in this entire industry. I’ve helped people make millions of dollars, and some of them over seven figure income monthly. Multiple, multiple, multiples make over six figures per month.”

Other event promotions (including <https://successbyhealth.com/red/?u=successbyhealth>, <https://successbyhealth.com/millionaireworkshop/?u=successbyhealth>, and SBH Workshops_Success by health) show a pattern of high, non-refundable entry prices and specific or implied income claims used in event promotion.

Figure 29. RED Event Promotion (Images from 2019-03-14 RED-STRAIGHT TALK-NO JOKE)



VI.2 Affiliate Recruitment and Duplication

91. For the new Affiliate seeking maximum rewards, the Fast Start System trains the individual to enter with the largest enrollment pack, establish a monthly auto-order, attend paid trainings, then “build a team” to “duplicate.” The Fast Start System provides specific advice for beginning to build a team, qualifying the Affiliate to rank advance to “Business Affiliate” and access higher earnings. The Fast Start System states that the Business Affiliate qualification requirements can be met purely with enrollment pack purchases and recruitment of new Affiliates.

“Now, this is real simple. You want to start growing solid, residual income right away and getting Business Affiliate qualified is a great way to do that. You just simply need to generate \$5,000 in team volume within one calendar month and, again, you want to do this by utilizing the efforts of other people on your team. Now, a very simple way to achieve this is to just start out with the Super Accelerator Pack and then have the two initial people that you refer to your team come in with the Super Accelerator Pack.”

“Now, that’s just one way to get BA Qualified. You can do that in a multitude of ways. You could start with a lower pack and have more people doing a little bit or again you could do a combination thereof. It’s completely your choice.”

92. Various SBH videos and documents build on this Fast Start System framework and provide additional training, especially with respect to Affiliate recruitment. In alignment with the SBH *Commission Plan*, training often focuses on higher levels of recruitment (i.e., the Power of Ten) and the importance of teaching recruits to duplicate (i.e., to repeat their upline member’s actions and teach their recruits to do the same). Figure 30 provides images from a pre-recorded video (2018-06-04 SBH Money Talk - Financial Freedom with SBH), where Mr. Noland describes the need to recruit 10 new Affiliates and duplicate, the result being a transformation from the difficult life of traditional employment to the liberation of being a “coffee millionaire.” He explains the results of building the 10-by-10 structure:

“This is all about duplication. When they [your 10 personal recruits] go find 10, they’re finding 10 but it’s adding to your Tier 2. So when that Tier 2 comes into play, your first Tier is all making \$500, you’re now making \$3,500 in this example. Now you’re talking

about replacing the income of most jobs. Now, when your Tier 2 just does exactly what you did, and what the people that referred them did, when they go find 10 ... guess what happens? Now they're making the \$500, your Tier 1 are all making \$3,500 per month in residual income and now, in this example, you're making \$23,500 per month in this example. Now you're talking about walk away income. You're talking about financial freedom income. When you go to the next tier, remember we pay you through six tiers."

"So that fourth tier, now when they're doing the same thing, they're finding 10, now your first tier are all making that \$23,500, your second tier are making that \$3,500, that next tier is making that \$500, right? But you're now making, in this theoretical example, \$173,500 a month. That's an extreme example. You're a coffee millionaire."

"When they [fifth tier Affiliates] all go out and just find ten ... now that's paying you \$1,173,500 in this example. Now you're not just a millionaire, you're a multi-millionaire."

Figure 30. The Potential of SBH and the Power of Ten (Images from 2018-06-04 SBH Money Talk - Financial Freedom with SBH)



93. In reference to the BAM bonus, Mr. Noland explains the role of recruitment and duplication in achieving the highest levels of income in a pre-recorded SBH video (2017-10-31 Lets Talk Coffee w Jay Noland (Private Video Released)):

“We’re going to pay out over a million dollars to folks who duplicate the Power of Ten. Find ten people personally that are on at least \$100 order every month. Once they have ten, so 10-by-10, we’ll pay you a \$1000 one-time bonus. When you help your 10 do the same thing, they’ll get a \$1000, you’ll get \$10,000. When those 10 help their 10 do the same thing, those people that are your front tiers are going to get \$1,000, second tiers get \$10,000, you get \$100,000. And then the next tier, you pick up a million dollars by helping your front tier get the \$100,000 bonus, and they’re helping their people get the \$10,000, who are helping their people get the \$1,000. So it’s going to really be powerful watching the duplication take over here. So there you have it. We have a powerhouse commission plan, we’ve got a product that nobody’s going to be able to compete with, and we’ve got the thing that you’re looking for the most, what’s that thing? What did we start out talking about? Residual income. Residual income. The thing that you’ve got to have to get free, I just showed you a powerhouse plan to get it.”

94. Recruitment and duplication, framed in terms of the Power of Ten, are discussed frequently and consistently in videos (including 2017-11-07 SBH Commission Plan, discussed in detail in Section V, and 2019-04-15 SBH Live Group Presentation with CEO Jay Noland) and in documents (including Business Overview | Success By Health and 2019-01-28 9_SBHGroupPresentationScriptCTM). As shown in Figures 14-18 and 20-22 (in Section V), recruitment and duplication determine financial success in SBH, and the Power of Ten provides specific recruitment targets for the SBH Affiliate. As discussed in Section V, the exponential growth of a 10-by-10 structure will leave the vast majority of Affiliates in a loss position. When combined with the incentives and instructions to pay into the system, recruitment and duplication translate to an illegal compensation structure. The Four Steps to Success, the Fast Start System and the Power of Ten train the new recruit to participate in and promote a pyramid scheme. Any claims associated with this system are deceptive. I will address claims further in Section VII.

VI.3 Retail

95. While the primary emphasis in SBH training and compensation is on Affiliate purchases, recruitment, and duplication, there is some discussion of retail sales in the SBH materials. References to retail and retail profit seem to serve two basic purposes: income claims and risk mitigation. In terms of income claims, retail profit is yet another avenue for inflating expected earnings. While claims will be discussed further in Section VII, recall that SBH representations frequently suggest that the Affiliate can earn \$54,000 per year in retail profit. For example, the Group Presentation Script trains the Affiliate to explain the potential for retail profit to prospects in this way (2019-01-28 9_SBHGroupPresentationScriptCTM):

“The 1st way we get paid as an Affiliate with SBH is Retail Sales: We Buy Wholesale, we Sell Retail and we keep the difference (Profit). The average profit per bag of coffee is \$15.00; the average customer purchases about 3 boxes per month (\$45). (Example of

10 Customers = \$450/mo, 20 Customers = \$900/mo, 100 Customers = \$4,500/mo...
\$54,000/yr”

96. As described in Section V, there is no basis for these projections, especially when we consider the way in which these numbers would grow with additional recruitment of Affiliates and customers. The mathematics (see Table 4) are untenable even before we consider the other aspects that undermine retail profit potential; namely, pricing and training materials. As discussed in prior Sections, the retail customer with consistent demand would be expected to purchase the product directly through the Affiliate's SBH website or the company's website to access the wholesale price. This alone undermines the retail profit projections used within SBH training and promotion. In addition, the SBH Fast Start System trains the Affiliate to offer the product at lower prices and ultimately convert customers to Affiliates (2019-01-24 SBH_FastStartSystem_v20190115):

“If they like the product(s), ask them if they would like to get the product at Retail, Wholesale, or for FREE. Most people will say they want to get the products for “FREE.”

“If they want products for FREE, set an appointment with them and show them the business plan. From there, they can sign up, buy products at Wholesale pricing, and start earning Commissions, and earn FREE Product. If they just want to get product at Wholesale pricing without signing up, they can purchase directly from your SBH website. If they want the products at Retail pricing, have them purchase product directly from you.”

“If you sample, you will get more appointments... how you get more appointments is by people saying they want the products for free. So see how the system there is put together to kind of lead from one thing to the next.”

“Most people, when you go through this process, they'll say they want it for free.”

97. The retail sales script (2019-01-28 4_SBHRetailSalesScript) similarly trains the Affiliate to offer lower prices for SBH products:

“I need you to help me out by buying at least a bag or two of coffee from me one time at Retail Pricing. If you like it, I will show you how to get it at Wholesale Pricing from then on.”

“THEY WILL ASK HOW MUCH DOES IT COST AND YOU TELL THEM:

Say “It's only (Choose Your Price) Retail per product. If you like it, I will show you how to get it at wholesale from then on.”

Despite this training, Mr. Noland repeatedly suggests that Affiliates will be able to earn substantial retail profits: “\$54,000 per year in retail profit alone ... we can help people get out of their jobs with that, so that's strong” (2017-11-07 SBH Commission Plan).

98. In terms of risk mitigation, it is clear at times that SBH and Mr. Noland are likely aware of the need for retail activity within an MLM structure to avoid being found to be a pyramid scheme. For example, policy 9 in the SBH Terms of Use document (Terms of Use – Success By Health) states: “AFFILIATE understands that commissions are solely earned on the sale of company products.” Promotion materials refer to the billions in SBH “sales” as coming from “MycoCafe Customers” (e.g., Business Overview | Success By Health). SBH materials

and Mr. Noland's commission explanations often begin by discussing retail customers, but eventually conflate Affiliate purchases with retail sales. In the quotes from a live presentation, Mr. Noland starts by talking about the "average person" and their expected coffee consumption. He then moves into the Power of Ten training where rewards are based on consistent Affiliate purchases. His language implies that the coffee is sold to customers, but the primary sources of Affiliate compensation are paid out whether those products are ever resold or not (2019-04-15 SBH Live Group Presentation with CEO Jay Noland):

"The average person is going to take three of these [bags of coffee] a week, and here's what I need you to do. Move about six of these bags a week. Find 10 people. You do it to, you've got to do it. Lead by example."

"You get 10 people to move six of these bags a week with you, I'm going to start sending you \$500 every month, whether you work or not."

"Now they're going to look at you and say, 'Well, I can do that too.' The right people go, 'I can get 10 people to move six bags a week.' When those 10 get, they all do what? They get 10 other people, how many? Ten. This ain't difficult, they just get 10. Everybody's moving how many? Six bags a week or 125 in volume."

"When your 10 get 10, moving six bags, those 10 are now going to get \$500 a month. But because you're sitting on top of that team, you're going to get \$3,500 a month...whether you work or not."

"It starts to duplicate."

"Now your ten's ten get 10, and they're all moving 6 bags or 125 in volume."

Mr. Noland continues to discuss earnings as the 10-by-10 structure grows. He then ties the wealth back to customer demand, arguing that people are addicted to coffee and will continue to reorder, "and you start getting paid month, after month, after month, after month, and then the next month." He asks the crowd to repeat this with him. This can leave the impression that large amounts of coffee are being purchased and consumed by retail customers, even though the *Commission Plan* requires no retail sales (see Section V). In my experience, it is common for MLM-based pyramid schemes to discuss retail sales in promotional materials and policies while having no meaningful training or incentives associated with retail activity.

99. There is one more way that retail profit is used within SBH—as an argument for quick and certain earnings. The Fast Start System describes retail profit as a way to build confidence and commitment:

"Now making profits right away is a strong motivator, especially when it comes to your confidence being built and boosted. So make it a goal to sell at least two SBH products within your first 48 hours in the business. That's right, so within your first couple of days in the business, have at least two of these products sold at retail pricing so you can make some profit, showing that the business works and you will be able to share that with other folks that are coming into your team."

Though retail profit may be discussed to elevate expectations, create the impression of legitimacy, or to create early confidence, the balance of training undermines retail and

focuses the Affiliate's attention on recruitment of new Affiliates. This emphasis on recruitment matches the incentives in the SBH *Commission Plan*.

VI.4 SBH One-Year Commitment

100. The Fast Start System also discusses the importance of making a one-year commitment to SBH and references a "1 Year Commitment Form." This document asks the new Affiliate to make this commitment explicit and explains the relationship between this commitment and the rewards available through SBH (1 Year Commitment Form):

"The difference between success and failure in life is a written plan that is specific, achievable, and tied to a timeline with a measure of accountability. This plan will define behaviors I will be committed to in my life and in my SBH Business."

"... I will pursue the SBH Opportunity with the full intention of SUCCESS. I am approaching my business with a true business mindset. I recognize that my first 3-6 months are a learning experience and that this Opportunity is based on a 3 to 5 year plan. I will work at least 10 hours per week on my SBH Business for a minimum 1 year and then evaluate my business accordingly."

Figure 31 shows the commitment form, which includes a pledge to be a "product of the SBH products," expose others to the SBH business, instruct recruits to go through the Fast Start System training, and personally attend all events and trainings.

Figure 31. The One Year Commitment Form (Excerpt from 1 Year Commitment Form)

<p>I hereby commit that I will:</p> <ul style="list-style-type: none"> • Give 110% to my SBH Business. • Be a Product of the SBH Products. • Launch my Business by hosting at least 4 SBH Business Mixers within my first 30 days. • Expose my SBH business to at least 2 people per day (5 days per week). • Make sure my team goes through the SBH "Fast Start System" Training. • Host or Attend at least 1 SBH Business Mixer (CTM) per week for the next year. • Attend all Major Corporate Events (typically 2 or 3 per year). • Attend all local weekly "Getting Started Trainings" and "Regional Events" in my area. • Practice at least 30 minutes of Self Development Daily. Commit to "Conquer Myself" and control my destiny. • Be an Honorable Person that KEEPS MY WORD. <p>I WILL CONDUCT MY BUSINESS BY THESE CORE PRINCIPLES AND I FURTHER COMMIT THAT I WILL BE HERE 1 YEAR FROM NOW!</p>

101. Overall, the recipe for success is clearly and consistently articulated through SBH Affiliate training: pay into the system and recruit others who will pay. These payments include the initial enrollment pack, ongoing monthly purchases, and event-related expenses. Recruitment and duplication are essential. The primary contributions of the

Affiliate are said to be effort, belief, and adherence to SBH training for at least one year. As Mr. Noland states (2019-04-15 SBH Live Group Presentation with CEO Jay Noland):

“The only people it’s not real to are those that don’t believe. You don’t got what you want because you don’t believe it. All you got to do tonight is to decide to believe, and it’s simple. You decide to believe you just figure out how you’re going to get in.”

A similar sentiment is expressed in the Fast Start System (2019-01-24 SBH_FastStartSystem_v20190115):

“we have in place the systems, tools, directions, and overall information to give you the best possible chance at accomplishing SUCCESS. Now, it’s up to you to make it happen. You can do it. It just takes Effort, Focus, and Dedication. If you are willing to apply yourself, you can accomplish whatever you want with SBH.”

Despite these assurances, the vast majority of participants are expected to lose money with SBH, by design. The following Section contrasts SBH income representations with the reality for SBH participants.

VII. Income Representations and Affiliate Data

102. Income representations are embedded in Sections IV, V, and VI, including specific income projections for retail profit and for recruitment through the Power of Ten. In this Section, I provide additional SBH income representations – general and specific – and discuss SBH disclaimer language. I then contrast representations with available SBH Affiliate data and discuss the continuance of representations in the most recent SBH materials.

VII.1 Income Representations

103. SBH and Mr. Noland make frequent use of general and specific earnings claims. Some of these claims relate to Mr. Noland’s personal wealth and his desire and ability to help others achieve “financial freedom.” The following quotes reflect this sentiment:

“I’ve been financially free, completely time and money free since I was 36. I’ve not had to work a job since I was 31. Now, I take that back, since I was 27. So I saw it when I was 27, I didn’t go back and work a job. But I had to keep doing it, but I did it hard for four years, working to get this thing called residual income going, working.”

“97% of the population are working week in, week out, paycheck to paycheck, struggling. 97%. This is crazy tonight. I haven’t had to work.”

“As I’m talking to you right now, I’m making money. If I lay down and go to sleep, I’m making money. Every night I sleep, I got money coming in. A lot of times, it was more than when I was awake.”

“You say, ‘Jay, just please tell me how you created a financial freedom life to where your son before he was born was already retired? And his kids are retired, and his kid’s kids are retired?’ I’m now working on my fourth generation. How many of you all want to roll like that? This is simple. You all got to just listen to me, because in this room tonight

there's going to be somebody that walked here for the first time, 18 months from now will never have to work again."

[He states that he is going to show them exactly what to do.] "You want to know why? Here's why. This is the whole catch tonight. Every time you make some money, I make some money. You all here what I said? Everybody in this room, believe it or not, I've got a vested interest in you. So if every time you make some money I make some money, how much money do I want you to make? So I'm just going to train you. I got all kinds of systems, show you exactly what to do. Now, if you ignore it, somebody else will pay attention. I'm casting a net tonight to say who's got the greatest common sense meter in this room. Right? Is there anybody in this room saying, 'Look, I'm just choosing to be dumb?' Anybody? How many of you all are ready to be free? You got to make a decision."

(2019-04-15 SBH Live Group Presentation with CEO Jay Noland)

104. Mr. Noland argues that his personal financial freedom stems from his ability to tap into residual income, and that SBH is the vehicle to provide this type of income to "the masses" (2019-08-01 SBH Heat Call). In the same call, Noland claims: "SBH has a plan that rewards you for immediate effort and sets you up for perpetual income." In a pre-recorded video (2017-10-31 Lets Talk Coffee w Jay Noland (Private Video Released)), Mr. Noland claims that the training will show the viewer how to "make professional money, and the money I'm talking about is residual income." Mr. Noland explains the power of residual income in the live presentation (2019-04-15 SBH Live Group Presentation with CEO Jay Noland):

"If you want to get free, you're going to have to make money when you're not working."

"Residual income, you've got to get that in your head. You cannot get free unless you make residual income. Let me explain it. That's where money comes in over and over again, for work you've already done. How many of you all would like to get paid that way? So you go and you work hard, how many of you all work hard? Alright, now, once you go to a job you work hard, they pay you for those hours, do you ever get paid on those hours any more? No, you exchange those hours for dollars, done. Wealthy people say if you do that you're crazy."

"Who in this room would like to be free? Right, have financial freedom, do what you want when you want, wherever you want, who would like to do it like that? You've got to have money coming in."

The benefits of residual income – including the ability to pay off debts and earn money in your sleep – are shown in Figure 32, as depicted in the SBH Common Sense Business video.

Figure 32. SBH and the Benefits of Residual Income (Images from 2019-02-08 SBH Common Sense Business)



105. The primary source of residual income at SBH is said to be the Tier Commissions: "What can that equal? Walk away residual income to where you never have to work again" (2017-10-31 Lets Talk Coffee w Jay Noland (Private Video Released)). Other commission types are also said to generate unlimited income potential, including the Generation Infinity Bonus. Mr. Noland argues that this bonus could pay out on 50, 100 or even hundreds of tiers, though the mathematics of exponential growth in a finite population make this impossible:

"Again, that can be walk-away income, because that takes you past your sixth tier down through infinity in some cases. You'll see people getting paid on their 50th and 100th tier because of that infinity bonus." (2017-10-31 Lets Talk Coffee w Jay Noland (Private Video Released))

"This can equal walk-away income because it can go through infinity.... could go down two, three hundred tiers and you could be getting one to four percent generation bonus on all of that. That's powerful." (2017-11-07 SBH Commission Plan)

106. As described in prior Sections, the recruit is told that residual income and financial freedom are a self-determined choice, as demonstrated by the quotes below and reflected in Figures 33 and 34:

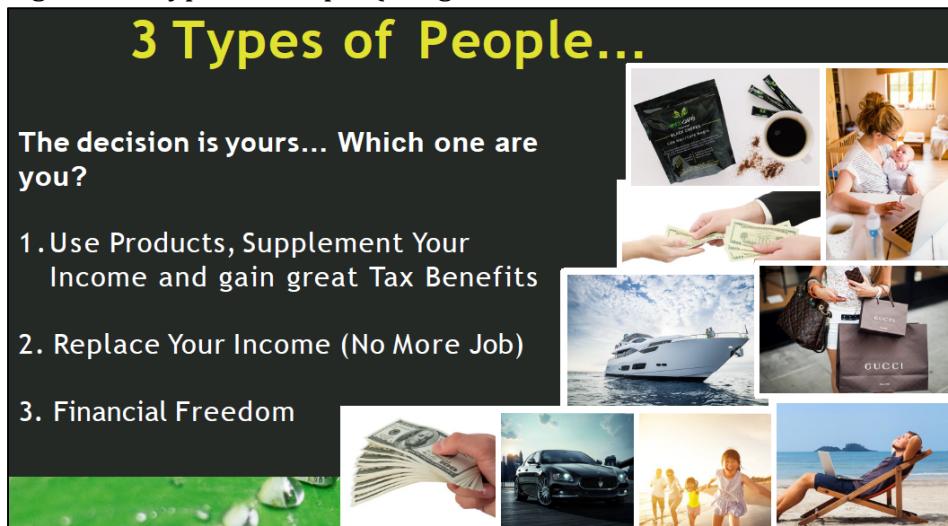
"The key is to at least Get Started somewhere. We've got plans for each of these 3 types of people. Simply pick your path and plug into our system. At SBH, we literally show people exactly what to do. There is no guessing.

Let the person know who invited you to this mixer if you are a #1 (Want to Supplement Your Income), #2 (Want to Replace Your Income – No More Job), or #3 Ready for Financial Freedom (Take Massive Action To Achieve Success)." (2019-01-28 9_SBHGroupPresentationScriptCTM)

Figure 33. Types of People (Image from 2018-04-09 SBH CEO's Company Vision Message)



Figure 34. Types of People (Image from 2018-05-05 SBH Business Overview B-2)



107. Mr. Noland explains that, as commissions grow, an Affiliate will have the opportunity to leave their job; he talks to them about how to "quit politely" (2019-04-15 SBH Live Group Presentation with CEO Jay Noland). In the commission plan explanation video (2017-11-07 SBH Commission Plan), Mr. Noland similarly discusses the ability to leave a full-time job:

"If you're working a job, I want you out of that job ASAP and, if you listen to me and you listen to our top leadership council, and our top leaders that are developing with SBH, you're going to be able to get out of that job in about six months if you pay close attention. Now there's no promises, but we've got the plan to get you out of that job in six months. Now how many people do you know that would love to go in and respectfully fire their boss?"

108. Mr. Noland claims that Affiliates who continue to build, using the Power of Ten, will generate wealth that can finance luxury purchases and can be handed down to descendants. He begins with the projected Tier Commission income associated with recruitment of 11,110 downline Affiliates who each purchase \$500 per month in SBH products (see Section V for details on this projection):

"\$173,500 a month...is it possible? Yes. Does Jay have anybody in his network doing it? Yes. Yes."

"But it don't stop, because your front tier are going 'If I see you became a millionaire, they looking at you, you're going in buying Lambos cash. Walk into a Ferrari dealership and they say 'How you want to finance that?' You say 'What's your wiring instructions?'"

"See when it starts coming in like that you don't finance stuff. You pay it."

"When that thing duplicates one more tier, I'm almost afraid to say it in this room."

"If that thing goes one more tier, you're now not just a millionaire, you're a millionaire a month."

"\$1,173,500 a month in that simple theoretical example, and you're freer than free. Now you're generationaly free. Now imagine your kids. Say you have two kids, each one of them get two, three, four million each to get their life going right."

Mr. Noland explains that you can even sell or will your ID number: "so when you're gone, it don't stop coming in because people keep on ordering coffee every single month."

109. In addition to "walk-away" residual income and generational freedom, achieved through commissions and bonuses, Mr. Noland claims that retail profit, on its own, can lead to life-changing income. These retail claims are provided without verified evidence of past success and without acknowledging the role of market conditions, substitute product pricing, or other relevant factors.

"You are going to make, on average, \$45 profit per customer, in my experience, because they're [customers are] going to take about 3 boxes of coffee per month."

"So if we can help the average person just get ten customers, we're keeping 85% of the population that files bankruptcy out of bankruptcy."

"Now does that happen? I've watched it happen over and over since 2005. People really replacing their income just selling the product." (2017-10-31 Lets Talk Coffee w Jay Noland (Private Video Released))

Affiliates can "double your money, some people make a thousand percent" when re-selling product to customers. (2019-04-15 SBH Live Group Presentation with CEO Jay Noland)

110. Training and recruitment materials directly address the likelihood of earning the projected income levels in SBH. In the 2018 Kickoff video (2018-12-20 SBH Kickoff 2018 Highlight Reel), a message appears on the screen:

“In direct sales as a whole, only 13% of members ever earn any commission.”

Another message then positions SBH as an opportunity that is more likely to yield profit:

“In the last two weeks of January 2018, 48% of SBH members earned a commission. How much will you earn in 2018?”

In the same video, Affiliates describe the reasons that they are participating in SBH and speak directly to the likelihood of achieving life-changing compensation.

“most importantly, there is an opportunity here for me to get financially free” (Kim C.)

“If you want time and financial freedom, if you have dreams, goals and aspirations that you don’t know how you’re going to achieve them, come to Success by Health.” (Billy P.)

“My people and I will know what to do, how to do it, and why we are doing it to make those millions happen for Success by Health.” (Jo Dee B.)

111. Mr. Noland argues that it is “common sense” that projected income levels are attainable with SBH (2019-02-08 SBH Common Sense Business):

“Now, how many people can we help become millionaires? I was bold enough to say it. That can happen here. Well, if that’s too big for you, how many people can we help get out of debt and actually pay their bills on time?”

“The probability of that happening raises sky high when you look at our four key points” [taste, price, health, and compensation]

“Now, I don’t know where you can go to get paid off of something that somebody is already doing, all the time that they’re completely addicted to.”

He expresses similar sentiments in other videos, often connecting the certainty of income with global coffee demand:

“it’s all being driven, foundationally, by coffee, four billion coffee drinkers in the world. Are you going to get some of this money? Because somebody is.” (2017-11-07 SBH Commission Plan)

“I want you to think about your probabilities of earning true residual income if you’ve got that much of consumption going on, every single day.” (2018-06-04 SBH Money Talk - Financial Freedom with SBH)

“People Ask: Can I do it? Does it work? Will it work for me? YES” (2018-05-05 SBH Business Overview B-2)

112. Beyond the personal development from SBH trainings and the financial benefits from the *Commission Plan*, SBH and Mr. Noland also promote the possibility of luxury trips and the benefits of forming a new community with SBH Affiliates and leaders. SBH leaders, including Mr. Noland, suggest that trip qualification is a choice, open to everyone, and he draws a connection between vacation qualification and residual income:

“What I love most about them [Affiliates] being here, is they’re all making money even though they are out here enjoying this incredible lifestyle here in Maui, Hawaii.”

"You know, in life, you know you've got to make decisions. Are you going to sit on the ground, or are you going to jump?"

Affiliates in the video affirm that the choice to join SBH brings great rewards:

"Success by Health has totally changed my life."

"Every single thing that we do is a choice."

"Don't be one to ever miss another trip."

113. Disclaimers are sometimes included in SBH materials, either as written statements in videos or documents or as verbal statements in audio/visual recordings. For example, Figures 11-16 and 19-20 (in Section V) each include a disclaimer in very small font at the bottom of each slide:

"INCOME DISCLAIMER: Any earnings information statements regarding income, or testimonials and examples, are used in the SBH Commission Plan solely to explain how the Commission Plan works and are not representative or guarantees of any earnings or income. Individual income results may vary significantly. No Implied Earnings."

This disclaimer is clearly contradicted by Mr. Noland's own statements, where he claims that projected income levels are assured so long as the Affiliate puts forth sufficient effort and follows the SBH instructions (2017-11-07 SBH Commission Plan):

"We cannot make any guarantees of income. I'm only giving you a simple theoretical example of how our commission plan pays, that's it. It's just the commission plan, simple theoretical example. If you don't do it, you won't make any money. But let me tell you something, you don't have to guess what PV, BV, CV or QV or anything. You go out there and do the sales, we've got set percentages here, set percentages that everybody can go and look at and can calculate, and if you put this volume through here, this computer system doesn't care what your race is, it doesn't care what your religion is, it doesn't care what your gender is, it's designed to have no emotion and just pay you some money. Now is that equal opportunity or not? I call it the economy equalizer."

"But what's going to happen is this organization is going to start developing, and there's going to be people that become leaders and there's going to be people that just want to drink coffee and they just want to supplement their income. And there's going to be some people that want to get out of their job. So there's going to be all these different types of people here."

"We'll see you at the top."

114. Similarly, Mr. Noland explains the "walk away" income projections and then adds disclaimer language:

"That is an extreme example. Now there's no guarantee of income, and it's really touchy to even talk about that potential but it's just the way it is. The numbers pay. The computer doesn't care about your background."

"Isn't it great that you can have an equal opportunity walk away residual income potential business here?"

"This is extreme. Hardly anybody will accomplish those type of numbers, but isn't it awesome to know that that potential is there?" (2018-06-04 SBH Money Talk - Financial Freedom with SBH)

"Think about this, \$23,500 a month in this simple theoretical example. Why is it theoretical? Cause you just ain't done it yet. But are there people that do it? Yes. I've got people in my network globally, they make that look silly. They make that look silly."
"At \$23,500 a month whether you work or not, 99% of the population will be financially free." (2019-04-15 SBH Live Group Presentation with CEO Jay Noland)

115. Beyond earnings, Mr. Noland discusses the tax benefits associated with being an SBH Affiliate:

"If you are not in, you don't have access to freedom, more than likely. So at least take that \$49, get all the tax benefits. You all know about that? Do you know when you get that 49, you have a home-based business. And there are IRS, former IRS attorneys and CPAs that says if you have a home-based business, you will add 5 to 15 thousand dollars. Don't record, don't record. Five to 15 thousand dollars to your bottom line. So what you're used to bringing home now, so what you're used to bringing home you're going to add on average they say five to 15 thousand more if you're still working a job."

116. Mr. Noland frames the SBH financial rewards as a form of generosity, as Affiliates are told that they will be helping their downline members achieve financial and time freedom as they seek those same rewards for themselves (2018-06-04 SBH Money Talk - Financial Freedom with SBH):

"Think about the people you helped through this plan."

"Think about your first tier. If you're making over a million a month in this example, they're all millionaires."

"You now have ten people that you introduced who are all millionaires. What's your impact on the world?"

"You've got 100 people that are now financial freedom people on that second tier."

"What job can you work that can give you that kind of opportunity?"

"We're bring the power to the people through our commission plan and through our products."

"Are you going to get free?"

"Come join us on this journey to freedom. We'll see you at the top."

117. SBH misrepresents the income opportunity to recruits, and it also trains Affiliates to misrepresent the SBH opportunity to others. One such example is the SBH Prospecting System, where Affiliates are given advice on questions to ask and examples to show a prospect. Figure 35 shows an example of questions that the Affiliate is trained to ask when closing a meeting with a potential recruit. These questions imply that any income level is possible, and that this income target is directly connected to the number of hours and months that the person commits to the SBH business opportunity. The two specific examples, based on retail and recruitment, both encourage the Affiliate to misrepresent potential income.

Figure 35. Prospecting System Questions and Income Examples (2019-01-02
13_SBHWeeklyGettingStartedTraining)

PROSPECTING SYSTEM (4 CLOSING QUESTIONS)

1. "Now, how much money would you need to make on a monthly basis, for this business to be worth your time?"
2. "How many hours per week could you put towards working your SBH business in order to get to \$_____ / month?"
3. "How long (months or years) would you be willing to work _____ hours per week to reach \$_____ / month?"
4. "If I could show you how to get to \$_____ / month working _____ hours per week for _____ months, you'd be ready to getting going, wouldn't you?"

IMPORTANT: Give 2 quick examples of "How We Make Money."

- A. RETAILER- Show 100 Customer Example (100 x 3 boxes of product/mo/cust at \$45 profit per customer = \$4,500 per month, \$54,000/yr)
- B. RECRUIT- 6 Tier Example at just 6 bags per week per Affiliate (10 Referring 10 and so forth...) (\$500 / \$3,500 / \$23,500 / \$173,500 / \$1,173,500/mo)

118. Other scripts provide evidence that Affiliates are trained to recruit new participants with deceptive income claims. Figures 36-39 provide excerpts from multiple training scripts. Some scripts (Figures 36-38) tell the Affiliate to say that it is possible to "replace your current income" or achieve "financial freedom" with SBH. Another (Figure 39) instructs the Affiliate to tell a specific story about the reasons they began working with SBH (no time for loved ones, not enough money) and directs them to say that SBH will provide the ability to pay off debt and have more time for health and family. This script even teaches the Affiliate to explain the "walk away" income available through Tier Commissions and the possibility of becoming a "coffee millionaire," mentioning that they should laugh after saying "coffee millionaire."

119. Throughout this Section, general and specific misrepresentations were made with respect to income and lifestyle benefits from SBH participation. As shown in Section V (*supra*), these income projections require ongoing recruitment that will undoubtedly leave the overwhelming majority of SBH Affiliates in a loss position. SBH and its representatives make no attempt to articulate the range of possible outcomes, nor the likelihood of those outcomes. The language itself does little to mitigate the risk of those misrepresentations. In my opinion, no disclaimer could adequately counteract the fraudulent nature of the SBH

compensation structure nor the misleading nature of the income claims, but Mr. Noland seems to proactively undermine the disclaimer.

Figure 36. Script-Coffee (2019-01-28 8a_SBHGroupPresentationInviteScriptCoffee)

Just imagine being able to make extra income or possibly replace your current income from sharing Coffee with others. Awesome concept, isn't it?

By the way _____ (Prospect Name), how important is making extra income to you?

Now _____ (Prospect Name), time is of the essence because of how rapidly the company is growing. SBH has already opened up in about 48 Countries and will be adding more soon.

Making extra income in today's economy is becoming extremely important for most people, so I want to get you in front of a Company Overview right away. Sound good to you?

Figure 37. Script-Pain (2019-01-28 8b_SBHGroupPresentationInviteScriptPainInflammation)

Just imagine being able to make extra income, or possibly replace your current income, from sharing Natural Pain and Inflammation Relief with others. Awesome concept, isn't it?

By the way _____ (Prospect Name), how important is making extra income to you?

Now _____ (Prospect Name), time is of the essence because of how rapidly the company is growing. SBH has already opened up in about 48 Countries and will be adding more soon.

Making extra income in today's economy is becoming extremely important for most people, so I want to get you in front of a Company Overview right away. Sound good to you?

Figure 38. Call Script-Coffee (2019-01-28 10a_3WayCallScriptCoffee)

Upteam Leader says:

Hello _____ (Prospect), _____ (new SBH Affiliate) has spoken very highly of you. Our company is always looking for sharp people to help out with our local, national, and international expansion. One quick question I'd like to ask you is "how important is earning extra income to you?" Making extra income in today's economy is becoming extremely important for most people and our company, SBH, is helping thousands of people supplement or replace their current income. We've also got several people that are achieving Financial Freedom already with our company.

Our concept is simple, yet powerful. We take the existing habit of coffee and put health into it. 80% of the population drinks coffee every day. That's about 4 Billion people globally.

How many people do you know that drinks Coffee or Tea at least occasionally?

Have you ever got paid to drink or refer Coffee and Tea? (almost everyone will say NO)

I hadn't either until I got involved with SBH. My life and finances are greatly improving because of SBH.

Figure 39. Group Presentation Script (2019-01-28 9_SBHGroupPresentationScriptCTM)

Good Morning/Afternoon/Evening my name is _____ and I would like to thank you all for coming out to hear about a Company called SBH (Success By Health) that is changing people's lives. Why did I get involved with SBH? Because I didn't have the time to spend with the ones that I loved and cared about the most, and I didn't always have the money for the things that I always wanted to do. I was living pay check to pay check with not enough money and not enough free time. I also wanted to put more value on my health. I didn't want to work forty hours a week, for forty years, and retire at forty percent of my income. I just couldn't live off of that.

Let me ask everyone a question... "Over the next 2-4 years, would you like to be out of debt, have better health, and the ability to spend more time with the people you love and care about?"

If you answered "yes," then it is time to seriously consider the options of how you will make the money in order to make these dreams come true. 97% of the population depends on a "Job" and they FAIL Financially. If you want to have the best opportunity to become Financially and Debt Free, then the best option is to build a "Successful Business."

3. SBH 6 Tier Bonus (Residual Income): This bonus allows you to get paid every time you order products from the company and earn commissions every time you refer someone who refers someone down through 6 Tiers. As you build a team you begin to earn Residual Income. You get paid 10% on everything you order and all orders that come through your website that the company give you as part of being an SBH Affiliate. You make 10% on all orders that come from anyone you Personally Refer and all their Customer Orders through their SBH website the company gives them. Then the plan pays 6% on the next Tier the same way. The next Tier pays 4%. The Tier after that pays 3%. And the 6th Tier pays 2%.

These percentage payouts can help you replace any current income you are making and also lead to walk away Financial Freedom.

Here's a simple theoretical example of the 6 Tier Bonus Plan in action... Let's say you Personally Refer 10 Affiliates who each move 6 bags of Coffee per week or 125 in volume using our other life-changing products. That 10% Commission on that Tier will pay you \$500 per month in Residual Income. If the 10 Affiliates you referred do the same thing and refer 10 Affiliates who move 6 bags of Coffee per week or 125 in volume, the 6% Commission on that Tier will pay you \$3,500 per month in Residual Income. If this duplicates another Tier, the 4% Commission on that Tier will pay you \$23,500 per month in Residual Income. For most people, this becomes walk away Residual Income to where they can be Financially Free. We still have 2 more Tiers available for Commissions through this plan. If this example continues to duplicate, the final 2 Tiers of income become mind-boggling for most people. This is where people become what we call "Coffee Millionaires." (Laugh at this point)

120. In sum, if a new recruit enters with commitment and a willingness to be trained, recruit others, and train them for duplication, the income potential at SBH is described as "massive." On the other hand, expenditures are described as trivial, both in relation to investments that would be required in other forms of wealth-creation and in relation to the

income that will be generated. Mr. Noland states: “You don’t have to order anything to get paid” and “you don’t have to place an order at all with us to get commissions” (2017-10-31 Lets Talk Coffee w Jay Noland (Private Video Released)). At other times, he describes the “entry barrier” as a (literally) laughable \$49. Even when discussing the \$2,000 entry price associated with a Super Accelerator Pack, he describes it as a minor investment that can be funded with credit. Recruits may be deceived into believing that profit potential is large and likely, and they are actively trained to repeat those claims and expectations to others.

VII.2 Affiliate Data and SBH Updates

121. In prior Sections, I discussed the expected loss rates when Affiliates follow the incentives in the SBH *Commission Plan* (Section V) and the corresponding instructions in company training materials (Section VI). In Section VII.1, I further explored the ways in which individuals might be deceived into entering SBH, through flagrant misrepresentations of potential income. In light of these findings, I now discuss available operational data for SBH and its Affiliates.

122. FTC staff provided data (netforce_byid_12192019) of SBH transactions from multiple payment processors and a bank, including Stripe, PayPal, and KeyBank.¹⁶ FTC staff applied a unique identification number for each participant, or group of participants where it appeared, for example, that more than one person was transacting from the same address or with the same credit card. Of the 7,100 unique IDs in the data, 69.2% (or 4,913) were identified as Affiliates. An individual was identified as an Affiliate if they had a personal transaction that referred to “enrollment,” “membership,” or “founder,” or if the individual spent more than \$499 in a single transaction or spent precisely \$49 (the cost of a membership). The four named defendants were excluded from this Affiliate group. In aggregate, Affiliates accounted for over 94% of SBH purchases (in dollars) between July 2017 and June 2019.

123. Table 5 reports the summary outcomes for SBH Affiliates, where net profit for each Affiliate was calculated by subtracting payments made to SBH (e.g., for SBH products and training) from any payments received from SBH over this time period. Based on this transaction data, the overwhelming majority – over 98% – of Affiliates are in a loss position, as payments to SBH exceeded revenues received from the firm. Figure 40 provides a histogram of Affiliate net profit/loss. For those with negative net profit, the average loss was approximately \$1,000. The largest number of Affiliates had losses less than \$500, but, in dollar terms, the greatest amount of money was lost by Affiliates with losses exceeding \$3,000, with an average loss of nearly \$10,000 per person and a collective

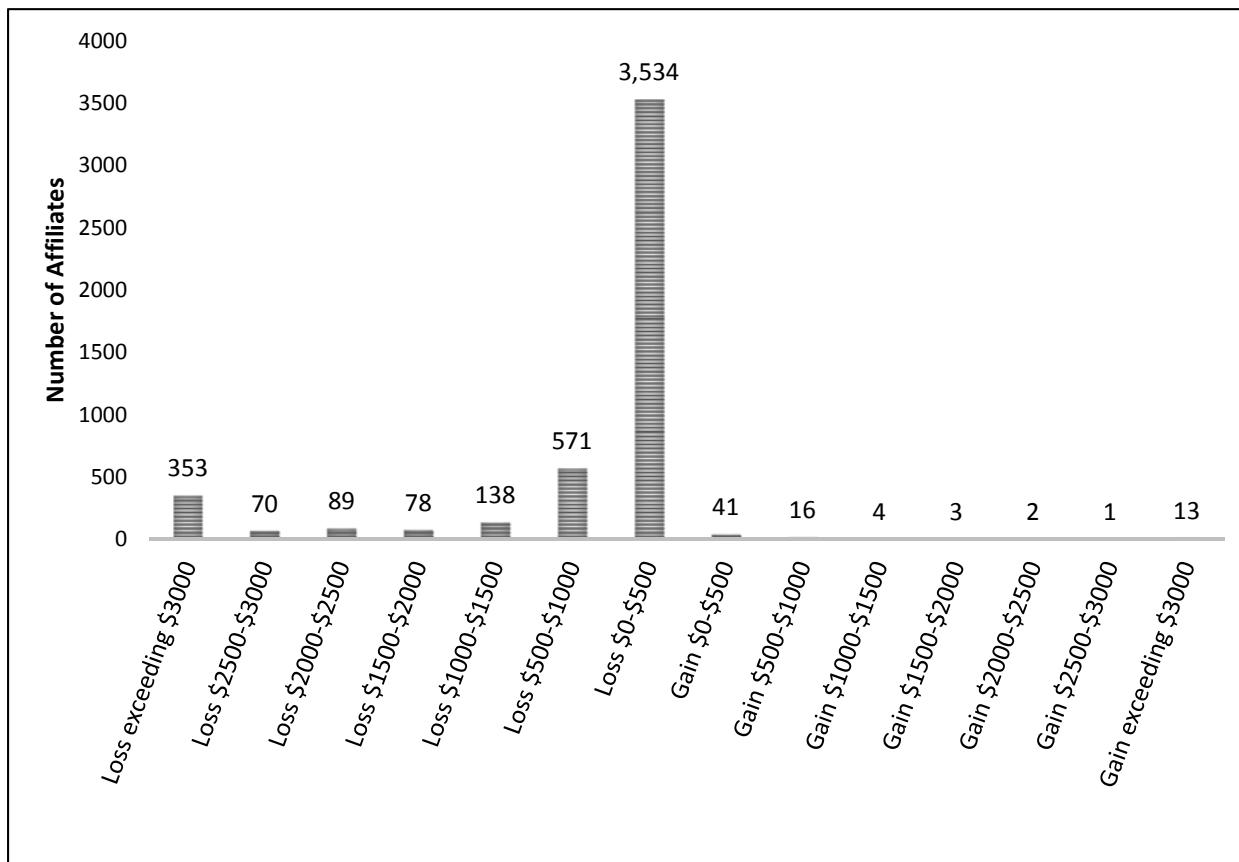
¹⁶ The data referenced is based on payments that went into and out of the main corporate account for Success by Media (SBM). Subject to verification, the dataset contains approximately 89% of payments to that account (\$6,115,928 out of \$6,858,221) for the period 7/1/2017-6/30/2019. It also includes approximately 79% of payments from that account (\$5,294,751 out of \$6,685,971); though that increases to approximately 90% if check card and point of sale purchases made by the company account are omitted. These check card and point of sale purchases are most likely associated with vendors and are, therefore, not likely to reflect payments to Affiliates. All of these amounts exclude internal transfers coming into and out of SBH accounts within the same bank (\$606,235 coming from the corporate account and \$372,500 from other accounts).

loss of approximately \$3.5 million.¹⁷ For most (67%) in this “high loss” group, losses resulted from a combination of training and product investments. Overall, while only 8.3% of Affiliates paid for training, those who did purchase training had an average net loss of \$6,884 and spent, on average, \$2,955 on training and \$5,885 on SBH products (as compared to an average of \$936 in product expenditures across all Affiliates).

Table 5. Summary Outcomes based on SBH Transaction Data for 7/1/2017-6/30/2019 (netforce_byid_12192019)

<i>Cumulative Net Profit</i>	<i>Net Loss</i>	<i>Net Gain</i>
<i>Number of Affiliates</i>	4,833 Affiliates	80 Affiliates
<i>Percent of Affiliates</i>	98.4%	1.6%
<i>Total Profit/ Loss for Group</i>	\$ (4,962,615.34)	\$ 184,659.80

Figure 40. Affiliate Profit based on SBH Transaction Data for 7/1/2017-6/30/2019 (netforce_byid_12192019)



¹⁷ For some Affiliates, *final* cumulative net profit is not known as their participation with SBH continued past June 2019. If the patterns in this data persist past June 2019, Affiliate losses may increase beyond those observed in this time frame.

124. The net profit numbers presented may underestimate revenue – to the extent that there is any offline retail profit – but also may underestimate Affiliate expenses. Additional expenses may include foregone income and the purchase of SBH-branded apparel, business cards and other sales tools from sites like SBHSwag.com¹⁸ (as promoted in 2018-05-05 SBH Business Overview B-2), as well as travel and lodging expenses associated with training events, meetings or conventions. The Affiliate might also incur expenses associated with hosting house parties (e.g., food and materials, as described in 2019-01-28 7_SBHGroupPresentationTips) or in an attempt to sell SBH products through kiosks or trade shows (as suggested in 2018-05-05 SBH Business Overview B-2). For this reason, these net profit outcomes may be conservative estimates of Affiliate losses.

125. The SBH Wallet System may also have a modest impact on Affiliate outcomes. The SBH Wallet System is an optional, internal system that was introduced in 2018 and promoted as a vehicle to easily reinvest earnings back into the SBH business opportunity. As described in 2018-03-12 SBH-Commissions-Wallet-Overview:

“If you plan to use earned commissions toward future purchases, simply keep some or all of your earnings in your wallet. If you’d like to claim some or all of your earnings and have them disbursed to you, the rest of this overview shows you the steps.”

These steps include establishing a bank/ACH account, requesting and confirming a withdrawal, and paying a \$2.50 processing fee for each wallet withdrawal. Figure 41 shows the image included in the Wallet Overview document, which accompanies discussion of reinvestment into the SBH business opportunity. As of December 31, 2018, SBH reported \$153,434.16 in Wallet System funds (2019-04-29 Success By Media Holdings - SEC Form C Offering Statement). Given that SBH urges Affiliates to “reinvest” these funds, I would expect that Affiliates ultimately would withdraw less than the full \$153,434.16. Even if all wallet funds were taken as withdrawals, the overarching profile of outcomes would be largely unchanged given the level of funds captured by this system.

Figure 41. Wallet Image of Reinvestment (2018-03-12 SBH-Commissions-Wallet-Overview)



¹⁸ Relevant if those purchases are not already captured in the SBH transaction data.

126. As described above, Mr. Noland attributes good outcomes to effort and adherence to the system, suggesting that poor outcomes for the overwhelming majority are attributable to a lack of desire, time, effort and commitment on the part of the Affiliate him/herself. In reality, the distribution of Affiliate gains and losses corresponds to the expected distribution of profit in an MLM incentive and training structure that emphasizes recruitment and internal purchases over ultimate user sales. In short, the vast majority are in a loss position where those losses are largely attributable to the SBH structure and operational practices, rather than to Affiliate effort or skill. In fact, the Affiliates who adhere to the system, making significant investments in product, training and time, often lose the most.

127. The preceding summary demonstrates a pattern of misleading representations. Income projections and other promotional messages include lifestyle claims and specific income numbers without providing sufficient disclaimer language or information on the likely earnings for the majority of participants. These representations are likely to generate income expectations far in excess of the realized outcomes for the vast majority of SBH Affiliates. Frequent promotion of low-probability rewards is likely to inflate the perceived likelihood of earning those same rewards.¹⁹

128. A 2019 video shows that income claims and misrepresentations persist in more recent SBH materials. In the SBH Power2 and VOZ Travel Training video, Mr. Noland repeats the practice of providing income disclaimer language (see Figure 42) and then directly contradicting that disclaimer. He states: "You will not make money, there's no guarantees or implied earnings whatsoever unless you go produce." He adds (at 6:35): "So we talk about anything with theoretical examples, we say they're theoretical because you haven't done it yet. If you do it, you get paid. If you don't do anything, you don't get paid." As Figure 42 shows, SBH also states that "income earned will be the direct result of your personal efforts and ability to produce."

¹⁹ Frequent mention of "winners" takes advantage of a phenomenon known as "availability bias," where decision-makers assess the likelihood of an event based on the ease of recalling that event in their memory. When the prospect hears or sees information about a winner, it is expected to increase their perception of the likelihood of "winning" in this environment because it is easy to recall memories of those images or messages. To adequately counteract this effect, one would theoretically need to devote similar attention to each loser, meaning that far more overall attention would be devoted to the "losing" stories given that they represent the majority of participants. For example, if only 1 in 100 distributors achieved the first BAM Bonus, 99 similar messages would be needed discussing those who did not qualify for this bonus. In this case, because the recruit or current Affiliate is hearing only about the likely "winners" in SBH, he/she likely has an inflated expectation of personally earning those same rewards or income levels. For an academic discussion of availability bias, see the classic text by Kahneman, Slovic and Tversky (Kahneman, D., Slovic, P., & Tversky, A. (Eds.). (1982). *Judgment Under Uncertainty: Heuristics and Biases*. New York: Cambridge University Press). For an illustration of this bias with respect to lottery tickets, see Dan Gilbert's TED Talk – Why we make bad decisions (https://www.ted.com/talks/dan_gilbert_researches_happiness?language=en).

Figure 42. Income Disclaimer Language (image from SBH Power2 and VOZ Travel Training)

IMPORTANT DISCLAIMER

- This is a Success By Health (SBH) Strategic Mastermind Session.
- SBH wants to clearly state that there are no guarantees or implied earnings with the SBH Commission Plan.
- The purpose of this SBH Strategic Mastermind Session is to properly educate SBH Affiliates, so they have a clear understanding of how we are about to move forward with our company, in order to create a great amount of momentum for our Affiliates and the Company.
- This SBH Strategic Mastermind Session is not to be used for “recruiting” purposes.
- Should “Prospects” (Non-SBH Affiliates) view this information session, they are to understand there are no guarantees of earnings with the SBH Commission Plan. Any income earned will be direct result of your personal efforts and ability to produce the results that will generate income.
- Earning any significant amount of income in any business typically requires extraordinary amounts of effort.
- This information operates under the protection of the 1st Amendment




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129. Mr. Noland then goes on to explain the speed of growth, even within the 2-by-2 structure promoted by the Power2 Bonus (see Section V for more discussion of this bonus). As shown in Figures 43 and 44, he argues that it is possible, and even easy, to build large teams quickly, generating specific financial rewards:

“Can you imagine having a team grow that fast? I’ve had it happen in a matter of weeks. I’ve had over 8,000 people come into my team in 12 weeks or less, in some cases. So it just keeps going on, look at it. It just keeps doubling, everybody getting two. So you’ve got to tell people when you bring them into the business, if they say they want to be a business builder, they want to replace their income, they want to get financial freedom, say ‘then you’ve got to be counted on for at least two a month, preferably two a week, two business packs.’”

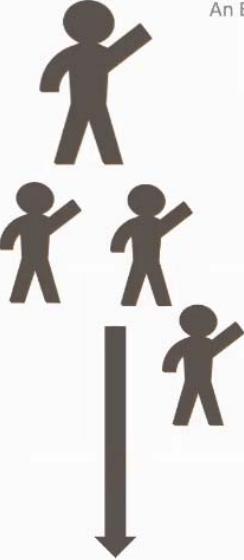
“Say you were going slow, you were crawling on your eyelashes slow and you got two people, it took you a whole month to get two. And all you did and your two did every month was you sold two packs a month and your two recruited two, you didn’t recruit anybody else, and those two recruited two. Look at what can happen in this example.”

“If everybody just closes a starter pack... you close just one starter pack. But, 4,095 people did it on your left team and 4,095 people did it on your right team and everybody closed one pack up to \$53,235 that month. Everybody putting in a pack...that’s with one pack, not two.... That’s why we have to put a cap in.”

Figure 43. Growth from “2 Who Get 2” (image from SBH Power2 and VOZ Travel Training)

The Potential of 2 Who Get 2...

An Example of How Rapidly Your Team Grows By the Simple Act of Everyone Getting Their 2



Month or Week	New Affiliates	Total Team
1	2	2
2	4	6
3	8	14
4	16	30
5	32	62
6	64	126
7	128	254
8	256	510
9	512	1022
10	1024	2046
11	2048	4094
12	4096	8190
13	8192	16382
14	16384	32766
15	32768	65534



As you can see, there is serious POWER in the model of “2 Who Get 2”.

In this theoretical example, in just 12 months (Wealth Warriors) have the potential of having a team of nearly 10,000 in their Power2!

For the 1's and 2's: if they just repeated the “2 Who Get 2” monthly, within a year they'd have nearly 10,000 in their Power2.

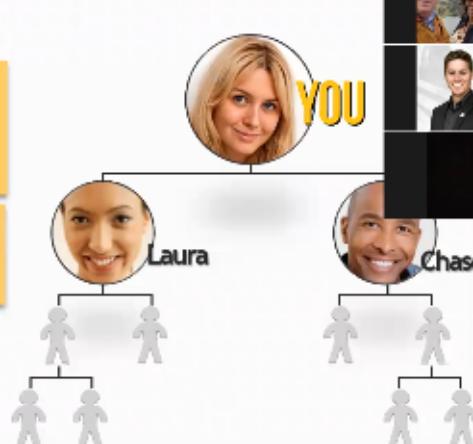
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Figure 44. Growth from “2 Who Get 2” (image from SBH Power2 and VOZ Travel Training)

Power2

Team Bonus

MONTHS OR WEEKS	# AFFILIATES
1	2
2	4
3	8
4	16
5	32
6	64
7	128
8	256
9	512
10	1024
11	2048
12	4096



8,190 ÷ 2 = 4,095
Coffee Drinkers per Team
x 65 CV
(commissionable volume per drinker)

266,175 CV
x 10-20%

\$26,617
to
\$53,235
(Power2 Comm. @ 10%)
(Power2 Comm. @ 20%)

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130. Mr. Noland again argues that he has used this approach to create his own personal wealth, and that he will teach others to do the same:

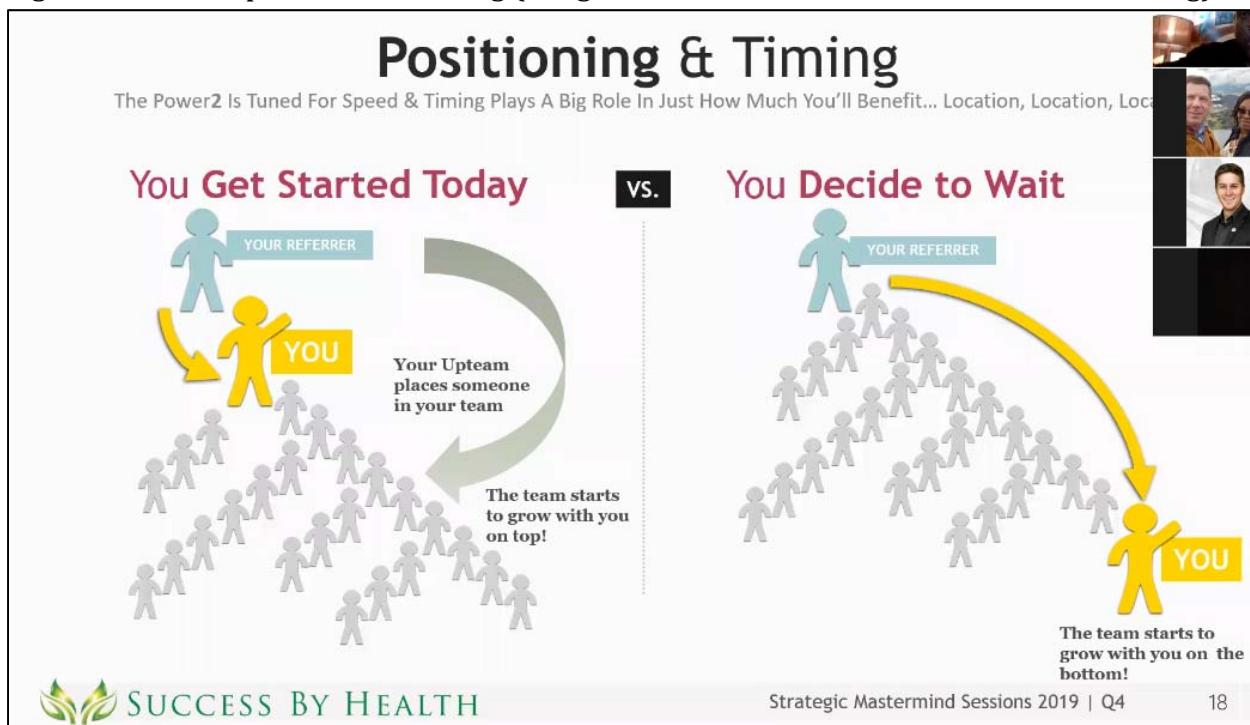
"That's why I can do what I want when I want, however I want. You don't have to guess. I'm showing you all the way. You just have to simply plug in and start talking to people like crazy with passion and conviction."

"Why in the world would you want to go out there and beat your head up against the world and work your tail off and never be rewarded for your efforts and you can come in here and sell you one starter pack and get you two other people to sell the one starter pack and you're at financial freedom. With \$26,617 a month in this simple theoretical example, you are at financial freedom."

"How can you maximize?" "Go out there and just start duplicating those packs and you'll see it happen for you."

These results are said to be contingent on the timing of entry. As shown in Figure 45, Mr. Noland argues that the team will grow quickly, so join right away or be left behind to suffer the consequences of significantly lower rewards.

Figure 45. The Importance of Timing (image from SBH Power2 and VOZ Travel Training)



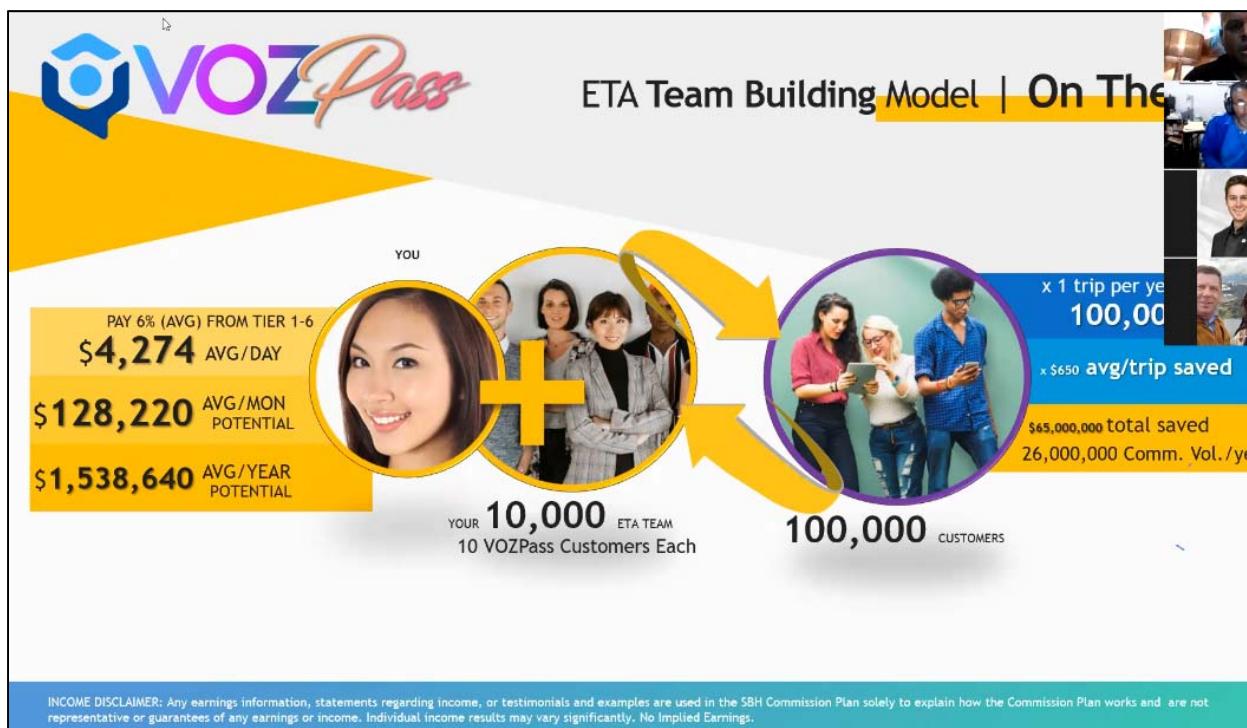
131. The video also discusses the introduction (at some unspecified time in the future) of travel-related products and enrollment packs. As Mr. Noland discusses the benefits of this new line of products, he discusses the benefits of growing large downline teams based on the Power of Ten. He describes building a team of 1,000 as requiring "casual effort" and

building a “simple team of 10,000” as a logical next step. He speaks to the likelihood of achieving those levels of recruitment:

“Is that doable? That’s the question. Can the market hold that? With 8.1 trillion [in travel sales], can the market hold this volume? Absolutely. What does it take to get involved? \$49.”

Figure 46 shows the projected income of over \$1.5 million for building a team of 10,000, who each have 10 customers that purchase discounted travel packages. This video demonstrates the continued use of deceptive earnings claims within SBH, as well as the emphasis on ongoing Affiliate recruitment.

Figure 46. The Importance of Timing (image from SBH Power2 and VOZ Travel Training



132. Overall, the information I reviewed suggests that recruits are very likely to have inaccurate, inflated expectations of profit given the many factors discussed in this Section. While the SBH *Terms of Use* policies claim to prohibit the use of income claims or misleading representations, the CEO and SBH materials continue to mislead consumers (and to direct consumers to mislead others) by suggesting that significant profit is likely – while internal data shows 98% of Affiliates are in a loss position – and that such profit is determined by the individual’s goals, work ethic, skills and adherence to the SBH system.

VIII. Safeguards

133. Having found that SBH's program grants rewards that are unrelated to actual sales to ultimate users, encourages and incentivizes participants to seek those rewards, and misrepresents likely income from the business opportunity, I next consider whether the company has "safeguard" policies and procedures that are sufficient to ensure that adequate retail sales to ultimate users exist and inventory loading²⁰ is prevented. As noted in Omnitrition (1996): "Where, as here, a distribution program appears to meet the *Koscot* definition of a pyramid scheme, there must be evidence that the program's safeguards are enforced and actually serve to deter inventory loading and encourage retail sales." Such safeguards are necessary, as a structure with insufficient retail sales will inevitably generate a pyramid scheme that relies on ongoing recruitment to fund commission payments, matching the general economic characterization of a scheme described in paragraphs 10-11. As established in paragraphs 12-13, the *Koscot* test also hinges on the existence of significant sales to ultimate users. In Amway (1975), the FTC found that Amway was not operating a pyramid scheme because it had adopted and enforced certain procedures to prevent inventory loading and to ensure that actual retail sales existed. As noted in Omnitrition (1996), the safeguard "policies adopted by Amway were as follows: (1) participants were required to buy back from any person they recruited any saleable, unsold inventory upon the recruit's leaving Amway, (2) every participant was required to sell at wholesale or retail at least 70% of the products bought in a given month in order to receive a bonus for that month, and (3) in order to receive a bonus in a month, each participant was required to submit proof of retail sales made to ten different consumers." These safeguards must be stated, enforced, and effective.

134. In the Amway case, the company's retail sales were in the form of re-sales by distributors, with product sold from the distributor's personal inventory. In SBH's model, retail sales can come from the Affiliate's inventory, sold person-to-person, or product can be sold directly through the Affiliate's website. Given the difference in business models, an effective Amway-type safeguard for SBH may look slightly different than the specific rules in Amway. However, the objective would be the same—to encourage sales to ultimate users who purchase for the purpose of personal consumption. I do not believe that the SBH safeguards would be effective to deter inventory loading and sufficiently encourage retail sales to ultimate users.

135. As part of the sign-up process, new Affiliates check a box indicating that they agree to the hyperlinked SBH *Terms of Use*. Within the *Terms of Use* document, there are multiple statements (shown in Figures 47 and 48) that appear to draw a connection between genuine demand for SBH products and Affiliate compensation, but those statements are hidden within the densely worded documents and directly contradict the company's own incentive structure and training described above. Specifically, the *Terms of Use* state that no compensation is based on the recruitment of new Affiliates (policy 12.a), yet SBH earnings claims are based almost exclusively on Affiliate purchases (not sales to customers) and advancement is driven by the number of recruited Affiliates and the volume of Affiliate

²⁰ Keep and Vander Nat (2014) define inventory loading as "purchases of inventory just to meet volume targets that grant multilevel rewards." See footnote 7 for full citation.

purchases. In SBH's own explanation of residual income in Figure 39 (*supra*), it states that "you get paid every time you order from the company and you get commissions every time you refer someone who refers someone down through 6 tiers." In particular, the Accelerator Bonus is a direct payment for recruitment, when that recruit purchases an enrollment pack.

136. SBH's *Terms of Use* document communicates some rules regarding income claims. As stated in policy 9 and 24 (Terms of Use – Success By Health):

"Truthful and Accurate: The AFFILIATE certifies that neither the Company nor his or her Referrer has made any claims of guaranteed earnings or representations of anticipated earnings that might result from his or her efforts. The AFFILIATE understands that he or she may not make any verbal or written statements regarding claims of income or potential earnings that might result from his or her efforts or the efforts of others, unless specifically disclosed in a AFFILIATE commission summary provided from time to time by the Company." (9)

"AFFILIATE agrees that now, and in the future, not to make any income or medical claims whatsoever." (9)

"An AFFILIATE may not make any false, unreasonable, misleading, or intentionally misrepresenting income projections to prospective or current AFFILIATES." (24)

Despite this language, a review of promotional and training materials, as discussed above, reveals a pervasive and persistent pattern of misleading income and lifestyle claims. The company's own materials and Mr. Noland consistently use income and lifestyle claims in recruitment and training. Disclaimer language is attached to a subset of materials, but this disclaimer is insufficient to counteract the misleading nature of the income claims. It is important to note that this is not a problem attributable to insufficient monitoring and enforcement, as the materials reviewed and discussed below are produced by the company itself. Misrepresentations are made within videos, speeches and audio trainings by those at the top of the company – primarily Mr. Noland. As discussed in Section IV, some representations are general while others are specific statements regarding income or lifestyle rewards. This Section includes a sample of representations of many forms. While this is not an exhaustive set, the messages and images above reveal that misrepresentations are fully embedded in the SBH marketing program, seemingly treated as the normal mode of operation. Additionally, although Affiliates agree not to purchase products solely for the purpose of compensation or advancement, that is precisely what they are required and instructed to do. As described above, Mr. Noland explicitly trains recruits to make an initial purchase, maintain monthly minimum purchases, recruit ten people, and train them to duplicate these actions. The *Commission Plan* and its associated explanatory video clearly direct Affiliates to follow these buy and recruit behaviors.

137. The SBH refund policy (policy 14) states that all products and purchases are non-refundable, and the policy outlines the negative consequences of seeking a refund from SBH. This policy is highly unusual and represents the antithesis of a safeguard. Further, unlike the Amway (1975) example, SBH has no minimum retail sales requirement, no 70 percent rule (requiring Affiliates to certify that 70% of their purchases were made to actual consumers of the products) or other specific inventory loading rule, and does not allow

refunds. It is useful to note that MLM firms, even those who have been prosecuted for pyramid scheme activity, typically pay – at a minimum – lip service to safeguard policies including a minimum retail requirement, 70 percent rule, and refund policy. SBH does not even pretend to have such safeguards. SBH policies, as they currently exist, do not limit the potential for pyramid scheme activity and associated harm to participants.

Figure 47. Excerpts from SBH *Terms of Use* Document – Income Claims, Training, Compensation, and Orders (Terms of Use - Success By Health)

9. Truthful and Accurate: The AFFILIATE certifies that neither the Company nor his or her Referrer has made any claims of guaranteed earnings or representations of anticipated earnings that might result from his or her efforts. The AFFILIATE understands that he or she may not make any verbal or written statements regarding claims of income or potential earnings that might result from his or her efforts or the efforts of others, unless specifically disclosed in a AFFILIATE commission summary provided from time to time by the Company. AFFILIATE also certifies that neither the Company nor his or her Referrer has made any Medical Claims regarding any cure, treatment, diagnoses, or prevention of any disease or illness in relation to any Success By Health products. AFFILIATE agrees that now, and in the future, not to make any income or medical claims whatsoever. AFFILIATE understands that commissions are solely earned on the sale of company products.

12. Rights and Responsibilities: AFFILIATE has the ability to refer others to purchase the company's products and services. AFFILIATE has the right to earn commissions based on the Company's AFFILIATE Commission structure. Affiliate is responsible to obtain training through the Company's AFFILIATE Back Office or online portals (Company Private Groups, etc). The AFFILIATE's Referrer is not responsible to train or support them. As such, AFFILIATES are not responsible to train or support anyone they refer to the program. Any training support a Referrer offers to someone they refer is a bonus. All training support that AFFILIATES will need is supplied through the Company's AFFILIATE Back Office platform under the training section or through designated online portals (Company Private Groups, etc). Each AFFILIATE's sole responsibility in Referralship, is to simply refer others to the Company's Products and Affiliate Program. From there, it is up to each AFFILIATE to obtain training from the company's Back Office or designated online training portals (Company Private Groups, etc).

a. AFFILIATES are compensated for the sale of Products sold to Customers and through their sales to Customers through their AFFILIATE organization. No AFFILIATE will ever be compensated for referring other affiliates. Without question, the sale of products to end consumers is the basis of the Company's Affiliate Commission program and must be emphasized while referring other Affiliates.

13. Personal Orders: AFFILIATES may only order product for their personal use through their own personal website link or personal company back office. AFFILIATES are strictly prohibited from ordering products through any other AFFILIATE's website link. In other words, it is strictly prohibited for any AFFILIATE to try and manipulate the Company's Commission Plan by setting up a structure to order products for their personal use through other AFFILIATE's website links for the purpose of earning more commissions or advancing in rank. Any AFFILIATE found violating this condition will have their Success By Health / Success By Media Membership terminated immediately.

Figure 48. Excerpts from SBH *Terms of Use* Document – Refunds, Disclaimers, and Auto-Orders (Terms of Use - Success By Health)

14. Refunds: SBH AFFILIATE Membership fees, product purchases, event ticket purchases, and courses are completely Non-Refundable. NO EXCEPTIONS.

If an AFFILIATE files any chargeback with their Credit Card company, this will be grounds for legal action against the AFFILIATE.

Each time an AFFILIATE violates the No Refund Policy and files a chargeback or disputes a purchase they made from the Company, the liquidated damages will be three (3) times the amount of each of AFFILIATE's disputed payments(s) to Company, but not less than \$1,000US (one thousand dollars).

24. Disclaimers: The AFFILIATE will make no claims of therapeutic or curative properties regarding the Company products or Income Claims involving the Company's AFFILIATE Commission Plan that are NOT contained in official Company literature that is produced and distributed by the Company. The Company's products are not intended to diagnose, treat, cure, prevent, or mitigate any disease and should never be offered as such. An AFFILIATE shall not suggest any diagnosis, prognosis, evaluation, treatment, description, management or remedy of illness, ailment or disease. An AFFILIATE may not make any false, unreasonable, misleading, or intentionally misrepresenting income projections to prospective or current AFFILIATES.

FDA DISCLAIMER: *Any statements about our Company's products have not been evaluated by the Food and Drug Administration. *Consult your physician before beginning use of any supplemental products, nutritional products, or beginning any exercise program.

30. Recurring Payment Terms (Auto-Order/Subscriptions) – OPTIONAL

There is NO requirement to set up an Auto-Order with Success By Health (SBH). Your choice to set up an Auto-Order is completely optional.

138. In terms of income representations and associated policies, I have previously discussed SBH's use of disclaimers (see paragraphs 113 and 114). Another example comes from the SBH website (<https://successbyhealth.com/disclaimer/?u=successbyhealth>), where the disclaimer language is as follows:

“Also, if there are ever any income earnings mentioned at any time they are not to be construed as any guarantee of income or potential income to any visitor of our website. As in any career field, income level achievements are dependent upon the individual's business skills, personal skills, personal ambition, time, commitment, activity and demographic factors.”

The language above, which attempts to blame Affiliates for their losses, does not offset the serious misrepresentations made in company promotion and training.

139. To summarize, there is no evidence that SBH has enforced and effective safeguards that would ensure sufficient sales to ultimate users and prevent inventory loading and

other forms of compensation plan manipulation. The absence of enforced and effective safeguards compounds an existing problem within the *Commission Plan*, that compensation is almost exclusively based on purchase volume, regardless of whether purchases lead to sales to ultimate users or not. Affiliates are trained, encouraged, and incentivized to make pay-to-play purchases and recruit others who will do the same. Existing SBH safeguard policies are virtually non-existent and the refund policy represents an “anti-safeguard.” It is clear that existing safeguard policies such as the supposed ban on “income claims,” have not been enforced. In fact, they have been openly violated by the company’s founder, Mr. Noland. That said, it would be difficult for any safeguards to counteract the existing training, promotion, and incentive systems. Again, this finding does not preclude the existence of genuine retail sales in SBH but suggests that the intended mode of operation treats retail as incidental, where retail occurs as a byproduct of Affiliate recruitment.

IX. Overall Conclusions

140. In sum, after reviewing the SBH incentive structure, promotion and training materials, representations, and policies, I conclude that SBH and its promoters are marketing a pyramid scheme and are misrepresenting to consumers the amount of money consumers are likely to make by joining SBH.

141. That SBH is a pyramid scheme is evident in several ways. Affiliate compensation is driven almost exclusively by recruitment of new participants and internal product purchases. Training and promotion materials emphasize the pay-recruit-duplicate system. Company “safeguards” are insufficient to ensure a minimum level of retail activity and safeguard policies and disclaimers are systematically contradicted by SBH incentives, requirements, and training. All advertised rewards can be achieved with Affiliate recruitment and internal purchases, without a single dollar in verified sales to an ultimate user. The anticipated result of SBH’s program is an endless recruitment chain. SBH’s income representations are false as the suggested (even promised) income levels cannot be achieved by the vast majority of participants. At any moment that the scheme is analyzed, the overwhelming majority are expected to be in a loss position. Available SBH transaction data confirms that the overwhelming majority (over 98%) of Affiliates have a net loss. Consumers are misled into joining the SBH opportunity and, for those who participate, consumer harm will be widespread and inevitable.

142. Based on a review of the materials described in paragraph 8, it is my judgment that SBH is operating as a pyramid scheme, both under the general economic characterization of pyramid scheme (described in paragraphs 10 and 11) and the *Koscot* test (described in paragraphs 12 and 13). Affiliate compensation is overwhelmingly triggered by recruitment and recruitment-associated purchases, not sales to ultimate users. Internal purchases are expected to be induced by the incentive structure and Affiliate training within the SBH marketing program, rather than genuine consumer demand for the SBH products. As discussed in paragraph 13, this finding is valid even if there are some external (i.e., non-Affiliate) sales and/or some share of internal ultimate user consumption, so long as distributor rewards are predominantly tied to rewards that are unrelated to genuine market demand (i.e., product sales to ultimate users). Furthermore, even when a multilevel

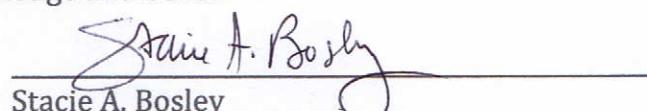
marketing pay plan does not explicitly compensate for the recruitment of a new distributor, compensation is deemed to be recruitment-based if new distributor recruitment induces payments and product purchases (immediate and/or over time) that lead to rewards and compensation for the sponsor and/or her upline. While some share of SBH compensation may be tied to sales to ultimate users, the compensation and training system is designed to predominantly compensate participants for recruitment of new Affiliates through a system of induced purchases.

143. It is clear from the income and profit illustrations set forth above that, if a new Affiliate follows the training instructions (e.g., in the Fast Start System and Power of Ten) and incentive structure set forth in the *Commission Plan*, his/her earnings will primarily be rewards for recruitment, rather than rewards for sales to ultimate users, and that an equivalent promise cannot be made and satisfied for each new SBH Affiliate given the exponential recruitment required. The ability for the most recent Affiliates to reach a positive cumulative net profit relies upon an ongoing and consistent ability to recruit new Affiliates. Returning to the economic definition of a pyramid scheme, the SBH business model, marketing and training materials, and *Commission Plan* do appear to create a perpetual recruitment chain that dooms the vast majority of participants to financial loss.

144. In terms of the *Koscot* test, I conclude from my analysis that SBH's business model and *Commission Plan* create a system that permits participants to receive rewards that are unrelated to actual sales to ultimate users. I also find that SBH's program, including its marketing and training, encourages and incentivizes participants to seek rewards through recruitment rather than sales of product to ultimate users. Furthermore, I find that SBH consistently and flagrantly misrepresents likely earnings to new recruits and that SBH has no safeguards that might serve to mitigate the risk factors inherent in the company's marketing program. In fact, SBH has policies that serve to further exacerbate consumer harm.

145. The anticipated result of SBH's program, as designed, is an endless recruitment chain, with a strong emphasis on recruitment over sales to ultimate users. At any moment that the scheme is analyzed, analysis indicates that the vast majority will be in a loss position. Available operational data corroborates these conclusions. I find that SBH and Mr. Noland are promoting a fraudulent marketing program, using deceptive and prohibited income representations.

146. I understand that this report may be used in a law enforcement proceeding. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.



Stacie A. Bosley

Appendix A. Curriculum Vitae

STACIE A. BOSLEY

Kahlert Chair of Economics
Hamline University
Saint Paul, Minnesota

sbosley@hamline.edu
651-523-2436

EDUCATION	Ph.D. in Applied Economics – University of Minnesota (2001) BBA in Finance – University of Wisconsin-Madison (1994)
ACADEMIC EXPERIENCE	Hamline University: Kahlert Chair of Economics (2018-present) Hamline University: Associate Professor, Economics (2017-present) University of Minnesota: Visiting Scholar in Applied Economics (2017-2018) Hamline University: Assistant Professor, Economics (2011-2017) Hamline University: Visiting Assistant Professor and Adjunct Instructor (2002-2011) Macalester College: Visiting Assistant Professor (2003-2005) University of Wisconsin River Falls: Adjunct Instructor (1999-2000)
COURSES TAUGHT	Microeconomic Principles, Intermediate Microeconomics, Econometrics, Behavioral & Experimental Economics, Labor Economics, Introduction to Business Analytics, First Year Seminars (“Our Wal-Mart World,” “Are You ‘Predictably Irrational?’” and “Your World through Data”), Macroeconomic Principles, Intermediate Macroeconomics, Managerial Economics (undergraduate and MBA), and Statistics
HONORS AND AWARDS	Hamline School of Business Dean’s Leadership Award (2017) Hamline School of Business Dean’s Teaching Award (2017) Hamline Center for Justice and Law Grant (\$2,500) – Project: Judgment and Decision-Making in a Pyramid Scheme Experiment: Lessons for Active Consumer Education (2017) Nominee for CASE U.S. Professor of the Year Award (2015) Hamline University Faculty Advisor of the Year (2013) Dean’s Leadership Award (2013) Inducted as Faculty Member in Omicron Delta Kappa (2008) University of Minnesota Doctoral Dissertation Fellow (2000-2001) USDA National Needs Doctoral Fellow (1997-2000)
PAPERS/ PUBLICATIONS	DeLiema, M., Bosley, S. & Shadel, D. (2019). Multi-level Marketing in the U.S.: Exposure, Adoption and Financial Outcomes, under review. Bosley, S., Greenman, S., & Snyder S. (2019). Voluntary Disclosure and Earnings Expectations in Multi-level Marketing, <i>Economic Inquiry</i> , forthcoming. [peer-reviewed] Bosley, S. (2019). TED-Ed Lesson: How to spot a pyramid scheme (video and associated online education materials). Available at https://ed.ted.com/lessons/how-to-spot-a-pyramid-scheme-stacie-bosley , April 2, 2019. Bosley, S., Bellemare M., Umwali, L. & York J. (2019). Decision-Making and Vulnerability in Pyramid Scheme Fraud, <i>Journal of Behavioral & Experimental Economics</i> , 80, 1-13. [peer-reviewed] Bosley, S. & Knorr M. (2018). Pyramids, Ponzi's, and Fraud Prevention: Lessons from a Case Study. <i>Journal of Financial Crime</i> , 25(1), 81-94. [editor-reviewed] Bosley, S. (2017). Expert Witness Declaration in <i>Aboltin v. Jeunesse LLC, et al.</i> , Case No. 6:17-cv-1624-Orl-40KRS.

Bosley, S. (September 29, 2017). Flawed Anti-Pyramid Act Reflects Confusion Over Past and Present. *Morning Consult*. Available at <https://morningconsult.com/opinions/flawed-anti-pyramid-act-reflects-confusion-past-present/>.

Bosley, S. (March 27, 2017). What social media can teach us about consumer protection. *Invited Guest Blog, Truth in Advertising*. Available at <https://www.truthinadvertising.org/ncpw-social-media-can-teach-us-consumer-protection/>.

Bosley, S. (2016). Student-crafted experiments "from the ground up." *International Review of Economic Education*, 22, 1-7. [peer-reviewed]

Bosley, S. (2015). Expert Witness Declaration in *FTC v. Vemma Nutrition Company*, Case 2:15-cv-01578-JJT.

Bosley, S. & McKeage K. (2015). Multilevel Marketing Diffusion and the Risk of Pyramid Scheme Activity: The Case of Fortune Hi-Tech Marketing in Montana. *Journal of Public Policy & Marketing*, 34(1), 84-102. [peer-reviewed]

Bosley, S. (2013). Comments Regarding the Federal Trade Commission's Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations, Project Number P087109.

Bosley, S. (2013). Participation in Direct Selling Across Countries: Analysis and Implications. working paper.

Davis, E., & Bosley S. (2007). The Impact of the 1990s Economic Boom on Less-Educated Workers in Rural America: Did the Rising Tide Lift All Boats? *Journal of the Community Development Society*, 38(1), 59-73. [peer-reviewed]

Bosley, S. (2004). Dead-End Jobs or Stepping Stones? The Long-Run Consequences of Early Industry and Occupation. Working Paper 04-03. The Retail Food Industry Center, University of Minnesota.

Bosley, S. (2001). Complex Job Mobility and Long-Run Outcomes for the 'Economically At-Risk'. Ph.D. Dissertation, Department of Applied Economics, University of Minnesota.

Honadle, B.W., Honadle G., Bosley S. & Currie E. (2000). Redefining Local Government Roles in Public Services: A Research-Informed Process Model. *Public Management*, 2(4), 457-475. [peer-reviewed]

Ben-Ner, A., Kong F., and Bosley S. (1999). Workplace Organization and Human Resources Practices: The Retail Food Industry. Working Paper 00-01. The Retail Food Industry Center, University of Minnesota.

RECENT PRESENTATIONS

Bosley, S., (2019). Exploring Pyramid Scheme Fraud and Multi-level Marketing with Economic Experiments. Presented to the Federal Trade Commission Midwest Common Ground Conference, Minneapolis, MN.

DeLiema, M., Shadel, D. and Bosley, S. (2019). Multi-Level Marketing: Research, Risk and Rewards. Paper presented at the annual meeting of the Western Economic Association, San Francisco, CA.

Bosley, S., Greenman, S. and Snyder, S. (2019). Voluntary Disclosure and Earnings Expectations in Multi-level Marketing. Paper presented at the annual meeting of the Western Economic Association, San Francisco, CA.

Bosley, S., (2019). Exploring Consumer Financial Fraud with Economic Experiments. Presented to the American Association of University Women, Minneapolis, MN.

Bosley, S., Greenman, S. and Snyder, S. (2019). Voluntary Disclosure and Earnings Expectations in Multi-level Marketing. Paper presented at the annual meeting of the Eastern Economic Association, New York City, NY.

Bosley, S., (2019). Exploring Consumer Financial Fraud with Economic Experiments. Hamline University Leo Lecture, Saint Paul, MN.

Bosley, S., Greenman, S. and Snyder, S. (2018). Voluntary Disclosure and Earnings Expectations in Multi-level Marketing. Paper presented at the Federal Trade Commission Consumer Protection Economics Symposium, Washington D.C.

Bosley, S. (2017). Decision-Making and Vulnerability in Pyramid Scheme Fraud. Paper presented at the annual meeting of the Southern Economic Association, Tampa, FL.

Bosley, S. (2017). Judgment and Decision-Making in a Pyramid Scheme Experiment. Presented at the Agricultural and Applied Economics Research Seminar at the University of Minnesota.

Bosley, S. (2016). Global Direct Selling: Do Values and Attitudes Trump Economic Conditions. Paper presented at the annual meeting of the Southern Economic Association, Washington D.C.

Bosley, S. & Knorr, M. (2016). How is a Pyramid Scheme like the Ku Klux Klan? Presented at the Saint Olaf Economics Lecture Series, Northfield, MN.

Bosley, S. & Knorr, M. (2016). How is a Pyramid Scheme like the Ku Klux Klan? Presented at the Hamline Faculty Research Colloquium, Saint Paul, MN.

Bosley, S. (2016). Business Opportunity or Scam: What every college student should know. Presentation to the Hamline Student Body (connected with First Year Seminar program), Saint Paul, MN.

Bosley, S. (2016). Pyramid Scheme Membership in Networks: The Role of Affinity, Education and Economic Conditions. Paper presented at the annual meeting of the Eastern Economic Association, Washington D.C.

COLLABORATIVE
RESEARCH
(competitive
research program
with
undergraduate
students)

Inoculating a Campus: Testing the Efficacy of Pyramid Scheme Education at Hamline
Informing a Pyramid Scheme Experiment: Exploring the Role of Impulsivity and Cognitive Processing in Judgment and Decision-Making
Joining a Pyramid Scheme: The Influence of Risk Preferences in Decision Making
Affinity Fraud in Multilevel Marketing: The case of Fortune Hi-Tech Marketing in the U.S.
Direct Selling and Economic Growth
Bitcoin, Behavioral Economics, and the Austrian School
The Minimum Wage and Community College Enrollment in the U.S.
Why Here and Not There? A look at participation and growth in direct selling across countries
Implications of Light Rail Transit in Minnesota
College Greek Participation and Long-term Outcomes
Division III Intercollegiate Athletics and Enrollment
The Conservation Reserve Program and Hunting Expenditures in Minnesota

SELECT PRESS

Interviewed in Ellie Undercover: Secrets of the Multi-level Millionaires, BBC, <https://www.bbc.co.uk/programmes/p076n2hg>, April 27, 2019.

Interviewed in The Dream podcast, Episode 6: How a Dream Becomes a Nightmare, <https://www.stitcher.com/podcast/stitcher/the-dream/e/56830345>, October 22, 2018.

Cited in "Pyramid Dream: Multi-level marketing companies evolve with the 21st century," Baltimore Magazine, June 2018 by Lauren Bell.

Cited in "College Students: Don't fall for these scams," TruthinAdvertising.org, August 30, 2018.

Cited in "Expert Economist Declares Jeunesse a Pyramid Scheme," TruthinAdvertising.org, November 2, 2017.

Cited in "Hard to pin down, scammers flourish in Minnesota," StarTribune, September 10, 2017 by Kevin Giles.

Cited in "Why do so many women love LuLaRoe?" Pacific Standard, December 15, 2016 by Francie Diep.

Guest on News and Views with Roshini Rajkumar, WCCO Radio, discussing holiday-themed pyramid schemes, December 2016.

Cited in "The Divine Rise of Multilevel Marketing," Christianity Today, November 23, 2015 by Kate Shellnutt.

Cited in "MLMs Tap College Campuses for Recruits," TruthinAdvertising.org, August 20, 2015.

Guest on AirTalk with Larry Mantel, Southern California Public Radio
"Tweens get into the direct sales market," June 19, 2014.

"The Avon Lady always rings twice: direct sales, MLM's, pyramid schemes and the wisdom to know the difference," January 15, 2013.
Cited in "Money between friends: Silicon Valley's embrace of Multilevel Marketing," *Pacific Standard*, September 19, 2014 by Helaine Olen.
Cited in "Has your college student been recruited by a questionable MLM?" TruthinAdvertising.org, August 26, 2014.
Cited in "ZeekRewards scam leaves N.C. town millions poorer," USA Today, March 30, 2013 by Mitch Weiss.
Cited in "Federal, state regulators shut down Fortune Hi-Tech," USA Today, January 28, 2013 by Jayne O'Donnell.

SELECT
SERVICE

Chair of Economics, Finance, Accounting & Quant. Methods Department (2018-present)
Minnesota Economics Association President (2018-2019)
Search Committee Member for Economics and Business Analytics (2018)
Minnesota Economics Association Interim President (2017-2018)
Faculty Advisor at Midwest Undergraduate Data Analytics Competition (2017-2019)
Minnesota Economic Association Board Member (2016-2017)
School of Business - Business Analytics Advisory Board (2016-present)
School of Business Strategic Plan Design Team (2015-2016)
School of Business Undergraduate Curriculum & Assessment Committee (2011-present)
Hamline Committee on Learning Outcomes and Assessment Member (2011-present)
Hamline University Institutional Review Board (2010-2017)
Search Committee Member for Digital Media Arts (2016)
Search Committee Member for Strategic Management (2015)
Hamline University Standing Committee on Sustainability Member (2014-2016)
Hamline University Assessment Director (2013-2015)
Hamline Plan Revision Taskforce Chair (2012-2013)

OTHER
EXPERIENCE

Associated Faculty - Hamline Center for Justice and Law (2016-present)
External Reviewer of Learning Outcomes Assessment for Saint Olaf College (2018)
Expert Witness in national class action case against Jeunesse Global (2017-2018)
Expert Witness in *FTC v. Vemma Nutrition Company* (2015-2016)
Article Referee for the following journals: *Annals of Public and Cooperative Economics*,
Communications in Nonlinear Science and Numerical Simulation, *International Journal of Pluralism and Economics Education*, *International Review of Economics Education*, and
Journal of Global Marketing
Consultant and Systems Analyst for Accenture (1994-1997)

Appendix B. Materials Reviewed

Title	Type
Website Content/Materials	
Website 2019.08.17 https://successbyhealth.com/?u=successbyhealth	Website
Website 2019.08.17 https://successbyhealth.com/our-company/?u=successbyhealth	Website
Website 2019.08.17 https://successbyhealth.com/red/?u=successbyhealth	Website
Website 2019.08.17 https://successbyhealth.com/millionaireworkshop/?u=successbyhealth	Website
Website 2019.08.17 https://successbyhealth.com/affiliate-details/?u=successbyhealth	Website
Website 2019.08.17 https://successbyhealth.com/disclaimer/?u=successbyhealth	Website
Website 2019.08.17 https://successbyhealth.com/terms-of-use/?u=successbyhealth	Website
Website 2019.08.17 https://successbyhealth.com/refund-policy/?u=successbyhealth	Website
Website 2019.08.17 https://successbyhealth.com/wp-content/uploads/2019/08/SBH_BusinessOverview_v2019Q3v0804_LowRez.pdf	Website, pdf
Affiliates page	PDF
Beverage_Success by health	PDF
Neutraceuticals_Success by health	PDF
Our Company_Success by health	PDF
Products_Success by health	PDF
Programs_Success by health	PDF
SBH 500 Club Pack_Success by health	PDF
SBH Accelerator_Success by health	PDF
SBH Business Club Pack_Success by health	PDF
SBH Combo Pack_Success by health	PDF
SBH Contact_Success by health	PDF
SBH Disclaimer_Success by health	PDF
SBH Facebook	PDF
SBH Foundation_Success by health	PDF
SBH GFYX_Success by health	PDF
SBH Millionaire Workshops_Success by health	PDF
SBH MYCOCafe_Success by health	PDF
SBH News_Success by health	PDF
SBH Personal Development_Success by health	PDF
SBH Privacy Policy_Success by health	PDF
SBH RED Workshops_Success by health	PDF
SBH Refund Policy_Success by health	PDF
SBH Shipping Policy_Success by health	PDF
SBH Support_Success by health	PDF
SBH SWAG_Success by health	PDF
SBH Workshops_Success by health	PDF
Success by health	PDF
Terms of Use - Success By Health	PDF

Overview and Commission Plan Documents	
2019-05-31 SBH_BusinessOverview_v2019Q2v1D_HiRez (Affiliate Business Tour)	PDF
2019-08-02 SBH-Commissions-Plan-2.0_2019v190801A-1 (Success By Health Commission Plan 2.0)	PDF
2019-08-04 SBH_BusinessOverview_v2019Q3v0804_HiRez (Affiliate Business Tour)	PDF
2018-05-05 SBH Business Overview B-2 (Affiliate Business Tour PowerPoint Presentation)	PDF
2019-04-04 174518955175763-001	Audio
2019-04-04 Founders Pack Relaunch	PDF
2019-07-02 Existing Founders Pack Relaunch Application	PDF
2019-07-02 Founders Pack Relaunch Application	PDF
2018-05-05 SBH Business Overview B-2	PDF
xxxx-xx-xx SBH Commission Plan to CBCAL	PDF
Affiliate Materials	
2018-03-12 SBH-Commissions-Wallet-Overview	PDF
2018-10-30 SBH-GlobalAmbassadorPackApplication	PDF
2019-01-02 13_SBHWeeklyGettingStartedTraining	PDF
2019-01-21 3_MemoryJoggerSBH	PDF
2019-01-22 5_RetailCustomerListSBH	PDF
2019-01-24 SBH_FastStartSystem_v20190115	PDF
2019-01-28 1_1YearSBHCommitmentLetter	PDF
2019-01-28 2_PowerOfAnAutoOrderProgram	PDF
2019-01-28 4_SBHRetailSalesScript	PDF
2019-01-28 6a_SBHProspectingSystemCoffee	PDF
2019-01-28 7_SBHGroupPresentationTips	PDF
2019-01-28 8a_SBHGroupPresentationInviteScriptCoffee	PDF
2019-01-28 8b_SBHGroupPresentationInviteScriptPainInflammation	PDF
2019-01-28 9_SBHGroupPresentationScriptCTM	PDF
2019-01-28 10a_3WayCallScriptCoffee	PDF
2019-01-28 10b_3WayCallScriptNutrition	PDF
2019-01-28 11_TGRConfidenceFormula	PDF
2019-01-28 12_SBH6PhaseCommissionPlan	PDF
2019-01-28 14_TGRDefinitePurposeFormula	PDF
2019-01-29 6b_SBHProspectingSystemNutrition	PDF
2019-06-24 Refund_Cancellation Policy - Success By Health	PDF
Affiliate Emails	
2019-05-28 Only 3 Days Left_End of SBH Volume Month	PDF
2019-05-31 Volume Month e-mail	PDF
2019-07-23 Important Policy Update (Effective Immediately)	PDF
2019-07-23 SBH Member update	PDF
2019-07-23 SBH Upgrade Packs Are Now Available!	PDF
SEC Filings	
2018-01-31 Success By Media - SEC Form C Offering Statement (amended)	PDF
2018-05-03 Success By Media - SEC Annual Report (CY2017) (amended)	PDF
2019-04-29 Success By Media Holdings - SEC Form C Offering Statement	PDF
Videos	

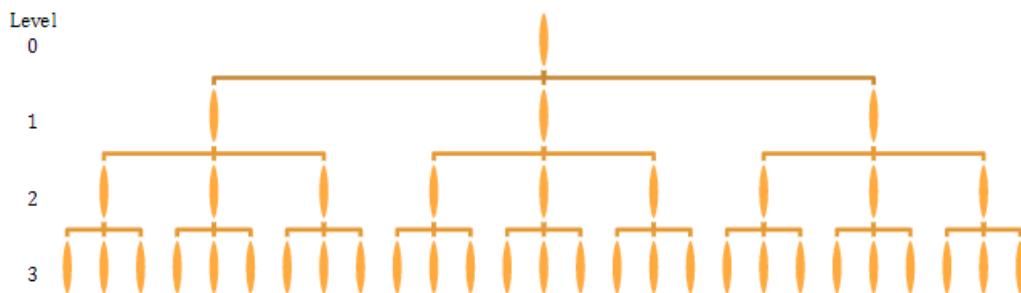
2017-10-30 SBH Plan B	Video
2017-10-31 Lets Talk Coffee w Jay Noland (Private Video Released)	Video
2017-11-07 SBH Commision Plan	Video
2017-12-02 Coffee Talk - Why SBH	Video
2017-12-11 The Power Of A Jay Noland Boot Camp!	Video
2018-03-02 HEALTHY COFFEE by Success By Health Affiliate	Video
2018-04-09 SBH CEO's Company Vision Message	Video
2018-06-04 SBH Money Talk - Financial Freedom with SBH	Video
2018-06-08 SBH Wealth Warriors Boot Camp Promo	Video
2018-08-08 Success By Health - 4th of July Bash	Video
2018-08-11 2018 SBH Wealth Warriors Boot Camp Highlights!	Video
2018-08-20 SBH Product Party For Your Body!	Video
2018-12-05 SBH Coffee Jam Session with SBH Master Formulators	Video
2018-12-20 SBH Kickoff 2018 Highlight Reel	Video
2019-02-05 G FYX Testimonial - Less Than 24 Hours of Use	Video
2019-02-08 SBH Common Sense Business	Video
2019-03-14 RED - STRAIGHT TALK - NO JOKE	Video
2019-04-15 SBH Live Group Presentation with CEO Jay Noland	Video
2019-05-04 SBH H3 Maui 2018 Dream Video	Video
2019-08-01 SBH Heat Call	Video
2019-xx-xx RED 2019 Is Coming!	Video
xxxx-xx-xx Million Dollar Energy Is Here!	Video
xxxx-xx-xx SBH 2018 Kickoff Training In Nashville! - YouTube	Video
xxxx-xx-xx SBH Aruba Arriba	Video
xxxx-xx-xx SBH Energy! Part 2 (Turn Up Your Speakers)	Video
xxxx-xx-xx SBH Kids - Orphanage School	Video
xxxx-xx-xx Success By Health - 2018 & Beyond!	Video
xxxx-xx-xx Success By Health Ganoderma	Video
xxxx-xx-xx Success By Health	Video
SBH Power2 and VOZ Travel Training	Video
Additional Documents	
2002-07-02 FTC Final Judgment and Order for PI as to JD Noland	PDF
2018-11-12 Success By Media v Curry (Nev. Dist. Ct. 2018) - Complaint	PDF
Base Commerce - mid-8530-DD2 Merchant Settlements	MS Excel file
netforce_byid_09202019	MS Excel file
netforce_byid_12192019	MS Excel file

Appendix C. Mathematical Analysis of a Pyramid Scheme

The following mathematical analysis of a compensation scheme is taken from the Declaration of Peter Vander Nat, formerly a senior economist with the Federal Trade Commission, filed in support of a motion for preliminary injunction and other relief in BurnLounge. I have reviewed and agreed with Dr. Vander Nat's methodology. This Section discusses the mathematical implications of a recruitment system when each entrant recruits X new members and X is some fixed positive integer (e.g., $X=3$). It will be demonstrated that, as recruitment continues, the organization grows at an exponential rate (so long as such recruitment can be sustained) and the percentage of participants at the base (i.e., the lowest level of the organizational structure) will converge quickly to a definite value. It is also the case that the percentage at the two lowest levels of the structure will also quickly converge to a known definite value. The same can be said for any chosen number of levels. This knowledge allows us to predict the loss rate at any period in time in the life of the scheme.

To demonstrate the mathematical properties of such a recruitment system and its resulting implications, analysis begins with an initial entrant who is placed at "level 0." This initial member recruits three new members, who constitute "level 1." When each of these level 1 participants recruits three new members, there are now $1+3+9=3^0+3^1+3^2=13$ members in the organization.

Iteration	Level	Number of Participants in		Total Number of Participants
		Level	Participants in	
0	Level 0		$1 = 3^0$	$1 = 3^0$
1	Level 1		$3 = 3^1$	$4 = 3^0+3^1$
2	Level 2		$9 = 3^2$	$13 = 3^0+3^1+3^2$
3	Level 3		$27 = 3^3$	$40 = 3^0+3^1+3^2+3^3$
...				
n	Level n		3^n	$T_n = 3^0+3^1+3^2+3^3+\dots+3^n$



If $T_n = 3^0 + 3^1 + 3^2 + 3^3 + \dots + 3^{n-1} + 3^n$ is the total number of participants in the scheme after n iterations when $X=3$ (i.e., each participant recruits three people), this can be generalized to:

$$(1) \quad T_n = X^0 + X^1 + X^2 + X^3 + \dots + X^{n-1} + X^n$$

for any positive integer X .

The percentage of participants at level n (i.e., the share of overall participants who constitute the newest class of entrants) is given by:

$$(2) \quad X^n/T_n = X^n/(X^0 + X^1 + X^2 + X^3 + \dots + X^{n-1} + X^n).$$

Dividing the numerator and denominator of (2) by X^n results in:

$$(3) \quad X^n/T_n = 1/[(X^0/X^n) + (X^1/X^n) + (X^2/X^n) + (X^3/X^n) + \dots + (X^{n-1}/X^n) + (X^n/X^n)]$$

and therefore

$$(4) \quad X^n/T_n = 1/[(1/X^n) + (1/X^{n-1}) + (1/X^{n-2}) + (1/X^{n-3}) + \dots + (1/X) + 1].$$

Equation (4) can be rearranged and expressed as:

$$(5) X^n/T_n = 1/[1 + (1/X) + (1/X^2) + (1/X^3) + \dots + (1/X^{n-1}) + (1/X^n)] = 1/[\sum_{k=0}^n (1/X)^k].$$

If each new entrant can recruit X additional members, n increases without bound (i.e., the scheme continues to grow indefinitely as each participant is able to duplicate the recruiting success of the person who recruited him or her). Since the denominator of (5) is a convergent geometric series, as n grows the denominator has a definite limiting value. The general formula for a geometric series (c.f. Apostol, T.M. Mathematical Analysis (1957), Addison Wesley Publ. Company) identifies the limiting value as:

$$(6) \sum_{k=0}^{\infty} b^k = \frac{1}{1-b}, \text{ where } |b| < 1.$$

By setting $b = (1/X)$, X^n/T_n (i.e., the percent of participants at level n) converges to the value given by

$$(7) 1/(\frac{1}{1-b}) = 1/(\frac{1}{1-(\frac{1}{X})}) = 1 - (1/X).$$

When $X=3$, (7) yields a value of $1 - 1/3 = 2/3 = X^n/T_n$. From this we know that, when each entrant recruits three new participants, the percentage of participants at the lowest level (level n) converges to 66.7%.

The percentage of members at the lowest two levels (n and $n-1$) can be found as follows:

$$(8) (X^n + X^{n-1})/T_n = [(X^n)(1 + 1/X)]/T_n = [(1 + 1/X)(X^n)]/(X^0 + X^1 + X^2 + X^3 + \dots + X^{n-1} + X^n).$$

Dividing the numerator and denominator of (8) by X^n and applying (7) yields

$$(9) (X^n + X^{n-1})/T_n = [1 + 1/X]/[(X^0/X^n) + (X^1/X^n) + (X^2/X^n) + (X^3/X^n) + \dots + (X^{n-1}/X^n) + (X^n/X^n)] \\ = [1 + 1/X]/[(1/X^n) + (1/X^{n-1}) + (1/X^{n-2}) + (1/X^{n-3}) + \dots + (1/X) + 1] \\ = [1 + 1/X][1 - 1/X] = 1 - (1/X^2).$$

For $X=3$, the percent of participants at the two lowest levels (n and $n-1$) is $1 - (1/9) = 88.9\%$.

Extending (9) to include three levels yields:

$$(10) (X^n + X^{n-1} + X^{n-2})/T_n = [1 + 1/X + 1/X^2][1 - 1/X].$$

When $X=3$, it follows from (10) that the percent of participants in the lowest three levels will be $[1 + 1/3 + 1/9][1 - 1/3] = 96.3\%$. Table 2 illustrates the results for $n = 1, 2, \dots, 20$ iterations and shows that the convergent values are achieved after six iterations, when just over 1,000 individuals have joined the scheme. Suppose, for example, that duplication is achieved for eight iterations (i.e., the founder recruits three, each level 1 participant each recruits three, and so on, until each of the 2,187 level 7 recruits each recruit three). This brings a total of 9,841 individuals into the scheme where $6,561/9,841 = 67\%$ of those people are at the “base,” the lowest level of the organization; $(6,561+2,187)/9,841 = 88.9\%$ are in the lowest 2 levels of the organization; and $(6,561+2,187+729)/9,841 = 96.3\%$ are in the lowest 3 levels of the organization.

Table C1: Scheme Growth When $X=10$ (i.e., each participant recruits 10 new members)

Level (n)	Participants in level n	Total participants (level n + all levels above)	% of participants at base level n	% of participants at base +1 levels above (bottom 2 levels)	% of participants at base +2 levels above (bottom 3 levels)	% of participants at base +3 levels above (bottom 4 levels)	% of participants at base +4 levels above (bottom 5 levels)
0	1	1	100%				
1	10	11	90.91%	100.0%			
2	100	111	90.09%	99.1%	100.0%		
3	1,000	1,111	90.01%	99.0%	99.9%	100.0%	
4	10,000	11,111	90.00%	99.0%	99.9%	100.0%	100.0%
5	100,000	111,111	90.00%	99.0%	99.9%	100.0%	100.0%
6	1,000,000	1,111,111	90.00%	99.0%	99.9%	100.0%	100.0%
7	10,000,000	11,111,111	90.00%	99.0%	99.9%	100.0%	100.0%
8	100,000,000	111,111,111	90.00%	99.0%	99.9%	100.0%	100.0%
9	1,000,000,000	1,111,111,111	90.00%	99.0%	99.9%	100.0%	100.0%
10	10,000,000,000	11,111,111,111	90.00%	99.0%	99.9%	100.0%	100.0%